

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE: ADAMS GOLF, INC.,
SECURITIES LITIGATION

§
§ CIVIL ACTION NO. 99-371-KAJ
§ (CONSOLIDATED)
§ REDACTED - PUBLIC VERSION

**APPENDIX OF EXHIBITS TO THE DECLARATION OF
JENNIFER R. BRANNEN IN SUPPORT OF THE ADAMS GOLF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (Volume 4)**

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Dated: September 18, 2006

ADAMS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: ADAMS GOLF, INC. : CONSOLIDATED
SECURITIES LITIGATION : C.A. NO. 99-371 KAJ
_____X

ORAL AND VIDEOTAPED DEPOSITION
OF BARNEY ADAMS
Thursday, June 22, 2006

The oral deposition of BARNEY ADAMS was held at the law offices of Akin Gump Strauss Hauer & Feld, LLP, 1700 Pacific Avenue, Suite 4100, Dallas, Texas, from 9:32 a.m. to 4:53 p.m., before Jamie K. Israelow, a Certified Shorthand Reporter in and for the State of Texas, Registered Professional Reporter, Certified Realtime Reporter and Certified LiveNote Reporter.

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09:45:36 1 time, seeing it happen to other people. It was
 09:45:39 2 just -- just one of those -- it's like "they."
 09:45:42 3 It's one of those known things.
 09:45:44 4 Q Do you -- do you have a belief as to
 09:45:46 5 why it happens, where there's a hot product in the
 09:45:49 6 golf industry?
 09:45:51 7 A Why? Can you define that for me, so
 09:45:56 8 I don't jump to a conclusion.
 09:45:57 9 Q My pleasure.
 09:46:00 10 I believe you said, Mr. Adams,
 09:46:02 11 that your understanding in the golf industry is
 09:46:04 12 that where there is a hot product, gray marketing
 09:46:09 13 occurs. My question is: Why?
 09:46:13 14 A I would -- this is just my
 09:46:16 15 assumption, because I'm now in the minds of the --
 09:46:21 16 that channel of distribution, but if it's a hot
 09:46:23 17 product and they have it in their store, you know,
 09:46:28 18 that's -- that's good retailing. I guess, from
 09:46:30 19 their perspective. I could say that's -- I'm
 09:46:34 20 thinking for them now.
 09:46:43 21 Q In your last answer when you referred
 09:46:46 22 to "them," were you referring to a nonauthorized
 09:46:53 23 dealer who receives product through gray market
 09:46:59 24 channels?

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09:46:59 1 A Nonauthorized -- yeah. I mean, I
 09:47:04 2 think I'm responding or I'm -- I believe I'm
 09:47:06 3 responding to what you asked me, which was: Why
 09:47:09 4 would somebody who was a nonauthorized dealer want
 09:47:13 5 to have Adams product?
 09:47:18 6 Q Okay. Why would somebody who's an
 09:47:22 7 authorized dealer or distributor want to
 09:47:26 8 transship?
 09:47:26 9 MR. BESSETTE: I'm just going
 09:47:27 10 to object again. It's asking him to be in the
 09:47:29 11 mind of one of those folks, so it's speculation.
 09:47:32 12 MR. COLLINS: Sure.
 09:47:34 13 Q (By Mr. Collins) And you know, I
 09:47:35 14 think Paul is right, so let me rephrase the
 09:47:37 15 question.
 09:47:37 16 Based on your experience in
 09:47:39 17 the industry, what were the circumstances, if you
 09:47:42 18 know, under which authorized distributors or
 09:47:47 19 retailers of hot products transshipped? Under
 09:47:54 20 what circumstances did that transshipping occur?
 09:47:56 21 A I have no idea. I mean, I'd only be
 09:48:00 22 guessing.
 09:48:03 23 Q Okay. Now, transshipment or gray
 09:48:08 24 marketing did occur at -- at Adams Golf pre-IPO,

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09:48:14 1 correct?
 09:48:20 2 A The only incident that I was aware
 09:48:24 3 of, or purported incident, was a very small
 09:48:28 4 quantity in Canada.
 09:48:53 5 Q Okay. When you say "a very small
 09:48:55 6 quantity," how many clubs?
 09:48:56 7 A I have no idea.
 09:48:59 8 Q More than 100?
 09:49:01 9 A Again, it was -- it was my
 09:49:06 10 recollection it was just a very minor thing, so I
 09:49:08 11 don't know what the definition of "minor" is.
 09:49:13 12 Q Okay. Pre-IPO, before -- before the
 09:49:18 13 IPO, is it correct that you were not aware of any
 09:49:23 14 other transshipping or gray marketing going on
 09:49:26 15 apart from this very small quantity in Canada?
 09:49:32 16 MR. BESSETTE: Can I get that
 09:49:32 17 question back, please.
 09:49:32 18 (The reporter read back the
 09:49:46 19 requested text.)
 09:49:46 20 MR. BESSETTE: Thank you.
 09:49:47 21 A Okay. Answer?
 09:49:49 22 Q (By Mr. Collins) Please.
 09:49:53 23 A That sounds very specific to me. If
 09:49:59 24 I was aware of any product in the gray market

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09:50:02 1 pre-IPO, it was extremely minor, and so to say
 09:50:09 2 that I wasn't aware of anything at all -- I mean,
 09:50:12 3 we had a million things going on at that time. I
 09:50:15 4 might have heard about, you know, a few pieces at
 09:50:18 5 some location. I honestly don't remember, but it
 09:50:21 6 certainly wasn't anything of any significance, any
 09:50:28 7 substance.
 09:50:28 8 Q Uh-huh. Okay. Let's -- let's talk
 09:50:44 9 for a moment why it wasn't anything of any
 09:50:46 10 significance or any substance. I want to
 09:50:50 11 understand, Mr. Adams, the reasons why you believe
 09:50:54 12 pre-IPO gray marketing wasn't of any significance
 09:50:57 13 or any substance.
 09:50:59 14 First, do I -- is it correct
 09:51:01 15 that it wasn't of any significance or any
 09:51:04 16 substance because the number of clubs involved was
 09:51:13 17 small?
 09:51:14 18 A I think the answer is it was, you
 09:51:15 19 know -- it was basically a nonissue. Well, that's
 09:51:20 20 not fair. It certainly was a very small number of
 09:51:25 21 clubs, if it was even going on.
 09:51:38 22 Q Okay. What do you mean by "a very
 09:51:40 23 small number of clubs"?
 09:51:43 24 A You mean in volume?

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<p>09:56:34 1 MR. BESSETTE: Objection, 09:56:35 2 vague. 09:56:36 3 A Yeah, I was just going to ask you, 09:56:38 4 you're going to have to -- again, you're going to 09:56:40 5 have to help me. 09:56:45 6 Q (By Mr. Collins) Not a problem. 09:56:46 7 Before the IPO, did Adams Golf 09:56:54 8 take any action to try to stem gray marketing in 09:56:57 9 Canada? 09:56:57 10 MR. BESSETTE: Same objection. 09:57:03 11 A I'm sorry, but again, if you can -- 09:57:04 12 if you could be specific, I'll do the best I can 09:57:07 13 to give you an answer. 09:57:11 14 Q (By Mr. Collins) I know you will. 09:57:11 15 Before the IPO, did the 09:57:13 16 company, Adams Golf, authorize a -- a price 09:57:16 17 matching program for Canadian retailers? 09:57:29 18 A I remember that Chris Beebe made a 09:57:35 19 recommendation. I forget the details of the 09:57:37 20 recommendation. 09:57:37 21 Q Let me ask you to look at Exhibit 85, 09:57:39 22 please. 09:57:39 23 A Okay. 09:57:48 24 Q Take your time, Mr. Adams. The</p>	<p>09:59:31 1 A I can't answer if I gave my personal 09:59:40 2 okay. I think we did something, but I don't 09:59:43 3 remember. 09:59:44 4 Q You -- you believe Adams Golf 09:59:46 5 authorized some program in Canada pre-IPO? 09:59:51 6 A I believe that we gave Chris the -- 09:59:54 7 the necessary tools to do a job for our 09:59:57 8 distributor. I don't have a recollection as to 10:00:00 9 specifically what it was. 10:00:01 10 Q That's fine. 10:00:03 11 Take a look, if you would, at 10:00:07 12 Exhibit 11. Again, take your time, sir. The 10:00:15 13 question is: First, have you seen this before? 10:00:19 14 And second: Does this 10:00:20 15 describe the program that was put into effect in 10:00:24 16 Canada pre-IPO? 10:00:49 17 A And your question again, please. 10:00:51 18 Q Have you seen this document before? 10:00:52 19 A I don't remember this document. 10:00:53 20 Q Does this document describe the 10:00:55 21 program that was put into place in Canada pre-IPO? 10:01:02 22 A It's a WDC Mackenzie document, and a 10:01:07 23 WDC Mackenzie program, so I can't -- I think I'd 10:01:14 24 be inaccurate if I said I knew what they were</p>
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<p>09:57:50 1 question, first of all, is whether you've seen 09:57:54 2 this document before 09:57:58 3 And the second question will 09:57:59 4 be: Does this document reflect the recommendation 09:58:06 5 that Beebe made? 09:58:06 6 Take your time. 09:58:27 7 A I've seen this before. 09:58:29 8 Q Did you see -- 09:58:30 9 A I say -- it's addressed to me, so 09:58:32 10 I -- it's a fair thing to say I've seen it before. 09:58:35 11 Q That's fine. 09:58:36 12 Does this document discuss the 09:58:38 13 recommendation that Mr. Beebe made that you just 09:58:40 14 referred to? 09:58:48 15 A I'm reading it. I want to be 09:58:49 16 specific here, so excuse me 09:59:03 17 Yes. What he refers to here 09:59:05 18 is that it -- it happened to all these other 09:59:09 19 companies in golf. They ran into a similar 09:59:12 20 situation at one time in their corporate lives, 09:59:15 21 and responded in -- in a specific manner, and he's 09:59:22 22 asking if it's -- if it's okay for us to respond 09:59:26 23 in the same manner. 09:59:26 24 Q And did you give your okay?</p>	<p>10:01:17 1 doing. 10:01:19 2 Q Okay. Did -- did Adams Golf 10:01:22 3 authorize WD Mackenzie to institute a 10:01:26 4 price-matching program with credit given in the 10:01:28 5 form of reduced prices on future shipments? 10:01:38 6 A I think the fair answer is that I 10:01:42 7 don't think WDC Mackenzie would have instituted 10:01:46 8 something like that if we hadn't supported them in 10:01:48 9 some manner. As to what we did, I don't have any 10:01:51 10 idea. 10:01:51 11 Q Okay. Now, you -- you mentioned a 10:01:54 12 moment ago that the gray marketing problem wasn't 10:01:56 13 of any significance or any substance pre-IPO. It 10:02:01 14 wasn't of any significance or any substance in 10:02:05 15 Canada; is that correct, or just overall to Adams 10:02:08 16 Golf, it wasn't of any significance or any 10:02:11 17 substance? 10:02:11 18 A Certainly overall. 10:02:12 19 Q Was it of any significance or any 10:02:15 20 substance for Adams Golf in Canada? 10:02:21 21 A Well, it's a -- it's a kind of a 10:02:25 22 beauty-in-the-eyes-of-the-beholder answer. From 10:02:28 23 our standpoint, our Canadian sales were 10:02:33 24 incremental, and it's -- it's not -- from a</p>

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10:02:37 1 corporate standpoint, it is not a significant
 10:02:42 2 issue.
 10:02:42 3 But again, being fair, and you
 10:02:45 4 have a distributor up there, and if they think
 10:02:48 5 it's a problem, regardless of the degree, I think
 10:02:51 6 the professional thing to do is support your
 10:03:07 7 distributor
 10:03:20 8 Q When you say: To support your
 10:03:22 9 distributor is the professional thing to do, what
 10:03:25 10 do you mean?
 10:03:26 11 A Could be a lot of things
 10:03:33 12 Q Give me -- give me a list.
 10:03:39 13 MR. BESSETTE: Just maybe some
 10:03:40 14 top highlights, you know, or we're going to be
 10:03:44 15 here all day.
 10:03:45 16 A It could be, you know, you listen to
 10:03:47 17 them. You send a representative to their area
 10:03:51 18 You -- you show them general support. I mean,
 10:03:54 19 they don't buy product without responsibility
 10:03:58 20 themselves, so it's not just: Hey, guys, we'll
 10:04:04 21 solve all your problems for you, especially in WDC
 10:04:09 22 Mackenzie's case, because my recollection is that
 10:04:11 23 they were new to the golf business themselves.
 10:04:13 24 So this was kind of a dual

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10:04:14 1 learning process. So you -- you, like I said
 10:04:18 2 before, you make professional judgments.
 10:04:21 3 Q (By Mr. Collins) And do you spend
 10:04:24 4 dollars? Do you commit resources to support your
 10:04:32 5 distributor in those circumstances?
 10:04:35 6 A That's a relative -- I mean, my
 10:04:39 7 answer's a relative answer. If you send somebody
 10:04:42 8 up there, you've spent dollars, so you're
 10:04:45 9 obviously doing something
 10:04:55 10 Q Let's go back to this question of why
 10:04:58 11 pre-IPO gray marketing was of any significance or
 10:05:03 12 substance
 10:05:03 13 In analyzing whether it was
 10:05:05 14 any significance -- of any significance or any
 10:05:06 15 substance, I understand from your prior testimony
 10:05:10 16 that one consideration was whether it was a very
 10:05:14 17 small number of clubs
 10:05:18 18 Beyond that, in considering
 10:05:19 19 whether it was any significance or any substance
 10:05:22 20 pre-IPO, is it a relevant consideration as to
 10:05:27 21 whether major customers of Adams Golf complained?
 10:05:34 22 A I think if they did, it would be,
 10:05:36 23 sure
 10:05:36 24 Q Why?

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10:05:40 1 A Well, I don't -- I'm not trying to
 10:05:43 2 sound trite, but I don't think anybody wants their
 10:05:47 3 customers to complain.
 10:05:48 4 Q Now, in considering why you don't
 10:05:54 5 want your customers to complain, especially your
 10:05:59 6 major customers, you don't want them to complain
 10:06:01 7 because if they complain, they may get unhappy,
 10:06:04 8 right?
 10:06:05 9 MR. BESSETTE: Objection,
 10:06:05 10 vague.
 10:06:07 11 Q (By Mr. Collins) You don't want your
 10:06:08 12 customers unhappy, do you, Mr. Adams?
 10:06:11 13 A I prefer that they be happy.
 10:06:13 14 Q Because if your customers are
 10:06:17 15 unhappy, one of the things your customers can do
 10:06:19 16 is stop dealing with you and start dealing with a
 10:06:20 17 competitor, correct?
 10:06:22 18 A Well, I guess they can do that at any
 10:06:25 19 time. It's the nature of business.
 10:06:27 20 Q And preventing major customers or any
 10:06:31 21 customers from dropping Adams Golf clubs and
 10:06:35 22 starting to sell other clubs is something that you
 10:06:39 23 have an interest in doing, correct?
 10:06:43 24 MR. BESSETTE: Can I get that

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10:06:43 1 question back?
 10:06:45 2 A Yeah, I was just going to ask the
 10:06:47 3 same thing.
 10:06:47 4 Q (By Mr. Collins) How about I
 10:06:49 5 translate that question so it can be understood
 10:06:52 6 MR. BESSETTE: Okay
 10:06:53 7 Q (By Mr. Collins) Adams Golf pre-IPO
 10:06:57 8 and all the time has an interest in preventing its
 10:06:57 9 customers from dropping Adams Golf and picking up
 10:06:58 10 some competitor?
 10:06:58 11 THE REPORTER: I'm sorry. Can
 10:06:58 12 you say that again?
 10:06:58 13 MR. COLLINS: Sorry.
 10:07:04 14 Q (By Mr. Collins) Pre-IPO, and at all
 10:07:07 15 times, Adams Golf doesn't want to lose customers
 10:07:12 16 to competitors, does it?
 10:07:15 17 A I don't think any business does.
 10:07:17 18 Q Now, in trying to analyze whether
 10:07:25 19 gray marketing was of any significance or
 10:07:27 20 substance pre-IPO, was it relevant as to whether
 10:07:31 21 the problem was occurring in more places than just
 10:07:39 22 Canada?
 10:07:39 23 A Excuse me. Again, I'm going to have
 10:07:42 24 to ask you to repeat that.

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<p>10:07:43 1 Q Not a problem.</p> <p>10:07:44 2 In coming to a conclusion as</p> <p>10:07:47 3 to whether the problem was of any significance</p> <p>10:07:52 4 pre-IPO, is it relevant to inquire where gray</p> <p>10:07:57 5 marketing is going on?</p> <p>10:07:59 6 MR. BESSETTE: Let me just</p> <p>10:08:00 7 object. It's sort of a hypothetical. Do you want</p> <p>10:08:02 8 to know did he consider that, or in some</p> <p>10:08:06 9 hypothetical context would he have considered</p> <p>10:08:08 10 that?</p> <p>10:08:08 11 MR. COLLINS: That's fair.</p> <p>10:08:10 12 Mr. Adams said that in his opinion pre-IPO, gray</p> <p>10:08:16 13 marketing was not of any significance or any</p> <p>10:08:20 14 substance.</p> <p>10:08:21 15 Q (By Mr. Collins) My question is --</p> <p>10:08:22 16 MR. BESSETTE: Or if it was</p> <p>10:08:23 17 even going on, I believe is what he testified.</p> <p>10:08:25 18 MR. COLLINS: Well, Mr. -- I</p> <p>10:08:26 19 believe he testified it was going on in Canada.</p> <p>10:08:29 20 Q (By Mr. Collins) So the question is:</p> <p>10:08:30 21 In coming to that conclusion that it wasn't of any</p> <p>10:08:33 22 significance or any substance, apart from</p> <p>10:08:36 23 considering the number of clubs, and apart from</p> <p>10:08:40 24 considering any complaints from customers,</p>	<p>10:09:53 1 Q (By Mr. Collins) Take your time.</p> <p>10:09:55 2 A The reason -- if I may repeat the</p> <p>10:09:58 3 question back so I can get it right. The reason</p> <p>10:10:00 4 that gray marketing wasn't an issue pre-IPO?</p> <p>10:10:03 5 MR. BESSETTE: Uh-huh.</p> <p>10:10:05 6 A It wasn't -- it wasn't going on. I</p> <p>10:10:07 7 mean, outside of a -- like I said, I -- I alluded</p> <p>10:10:10 8 to Canada, which is a very tiny market and a very</p> <p>10:10:14 9 small incident in a very tiny market. That was</p> <p>10:10:21 10 it. We didn't have a gray market issue pre-IPO.</p> <p>10:10:29 11 Q (By Mr. Collins) Okay.</p> <p>10:10:29 12 A To be -- I'm trying to be specific to</p> <p>10:10:31 13 your question. We didn't have quantities of</p> <p>10:10:34 14 product showing up in the gray market pre-IPO. I</p> <p>10:10:36 15 guess that's a better answer.</p> <p>10:10:37 16 Q And when I asked you, Mr. Adams, what</p> <p>10:10:40 17 you mean by quantities, can you tell me, please?</p> <p>10:10:43 18 A Same answer I gave you before. I</p> <p>10:10:44 19 mean, if it's a nonissue, it's a nonissue.</p> <p>10:10:48 20 Q And it wasn't -- it was a nonissue,</p> <p>10:10:50 21 you said in part, because there weren't quantities</p> <p>10:10:52 22 of product coming up. So in order to understand</p> <p>10:10:56 23 why you thought it was a nonissue, I need to know</p> <p>10:10:59 24 what you meant by "quantities."</p>
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<p>10:08:42 1 especially major customers, is it also a</p> <p>10:08:46 2 consideration as to the number of locations, the</p> <p>10:08:50 3 number of geographical areas in which gray</p> <p>10:08:54 4 marketing is going on?</p> <p>10:08:56 5 MR. BESSETTE: Same objection</p> <p>10:08:57 6 A Yeah. I'm sorry. Like I say, I'm</p> <p>10:09:00 7 not trying to appear argumentative, but that was a</p> <p>10:09:02 8 very long introduction to that question. If you</p> <p>10:09:04 9 can break it down for me, I will do my best to</p> <p>10:09:08 10 answer it</p> <p>10:09:08 11 MR. BESSETTE: Would it</p> <p>10:09:10 12 shortcut it if you just asked him what his reasons</p> <p>10:09:12 13 were for that conclusion?</p> <p>10:09:13 14 Q (By Mr. Collins) What were your</p> <p>10:09:15 15 reasons for that conclusion?</p> <p>10:09:15 16 A The -- we wanted to protect our chain</p> <p>10:09:29 17 of distribution.</p> <p>10:09:40 18 Q Okay.</p> <p>10:09:40 19 MR. BESSETTE: What he wants</p> <p>10:09:41 20 to know is what was the reasons for your</p> <p>10:09:43 21 conclusion that gray marketing was not a</p> <p>10:09:44 22 significant issue to the company pre-IPO.</p> <p>10:09:50 23 A Sorry. I've got to stop and think</p> <p>10:09:53 24 here.</p>	<p>10:11:02 1 A And my answer to that would be:</p> <p>10:11:05 2 Nothing came to my attention.</p> <p>10:11:20 3 Q Well, sure. Because you can't</p> <p>10:11:23 4 personally consider that something is a material</p> <p>10:11:26 5 problem unless you're aware of the facts, right?</p> <p>10:11:35 6 A I can't be sure if something is a</p> <p>10:11:37 7 material problem? I'm aware of the facts?</p> <p>10:11:46 8 I think in -- my answer to</p> <p>10:11:48 9 that would be: In my job, I did my best to act on</p> <p>10:11:48 10 facts.</p> <p>10:11:54 11 MR. COLLINS: Okay. I am</p> <p>10:11:54 12 going to mark Exhibit 291, if I may, Adams 28492.</p> <p>10:12:15 13 MR. BESSETTE: Thank you.</p> <p>10:12:15 14 (Deposition Exhibit 291</p> <p>10:12:15 15 was marked.)</p> <p>10:12:15 16 Q (By Mr. Collins) Tell me, please, if</p> <p>10:12:17 17 you've seen this document before.</p> <p>10:12:24 18 A Yes, I have.</p> <p>10:12:25 19 Q Are you the author of this document?</p> <p>10:12:29 20 A It's not signed by me, but my name is</p> <p>10:12:33 21 on it, and I think it's a fair assumption that I</p> <p>10:12:36 22 authored it.</p> <p>10:12:36 23 Q And you authored it in the course of</p> <p>10:12:39 24 your regular duties in or about June of '98?</p>

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<p>10:12:40 1 A I think that would be fair, yes</p> <p>10:12:42 2 Q Now, why did you write this letter?</p> <p>10:12:53 3 A It sounds like it's just an effort on</p> <p>10:12:55 4 our part to make sure that these guys were doing</p> <p>10:13:02 5 what they told us they were doing.</p> <p>10:13:04 6 Q By "these guys," you mean King Par?</p> <p>10:13:08 7 A They're the -- they're the object of</p> <p>10:13:10 8 the letter, yes.</p> <p>10:13:10 9 Q And as of June '98, you had some</p> <p>10:13:13 10 reason to believe, Mr. Adams, that King Par was</p> <p>10:13:17 11 transshipping?</p> <p>10:13:17 12 A I don't know if you can make that</p> <p>10:13:19 13 conclusion or not. I mean, it's -- it's --</p> <p>10:13:24 14 certainly no hard facts.</p> <p>10:13:29 15 Q Fine. What did you know about King</p> <p>10:13:31 16 Par at that time?</p> <p>10:13:33 17 A That they were a very -- if I</p> <p>10:13:36 18 remember correctly, they were a pretty good-sized</p> <p>10:13:39 19 customer, I think, in the upper Midwest.</p> <p>10:13:44 20 Q Okay. What else did you know about</p> <p>10:13:49 21 them?</p> <p>10:13:49 22 A I think that's about it, to be honest</p> <p>10:13:51 23 with you.</p> <p>10:13:55 24 Q Did you have any reason to think they</p>	<p>10:15:24 1 Manatee was thinking of transshipping?</p> <p>10:15:27 2 A I don't remember any specific</p> <p>10:15:28 3 incident.</p> <p>10:15:28 4 Q Did you have reason to believe that</p> <p>10:15:31 5 Manatee hadn't transshipped?</p> <p>10:15:34 6 A Same answer. I don't have any</p> <p>10:15:35 7 specific information.</p> <p>10:15:44 8 Q Now, I believe you testified that</p> <p>10:15:48 9 gray marketing has occurred before in the golf</p> <p>10:15:52 10 industry, correct?</p> <p>10:15:55 11 A It was common knowledge.</p> <p>10:15:56 12 Q And gray marketing, as of this</p> <p>10:15:58 13 moment, certainly has occurred before today at</p> <p>10:16:04 14 Adams Golf, correct?</p> <p>10:16:06 15 MR. BESSETTE: I'm sorry.</p> <p>10:16:06 16 Before today?</p> <p>10:16:08 17 Q (By Mr. Collins) Gray marketing has</p> <p>10:16:09 18 occurred at Adams Golf, right?</p> <p>10:16:11 19 A You -- are you referring to Canada?</p> <p>10:16:14 20 Q Sure.</p> <p>10:16:16 21 A There was a -- a incident of clubs</p> <p>10:16:21 22 showing up in Costco of Canada.</p> <p>10:16:22 23 Q And then post -- post -- I'm sorry to</p> <p>10:16:25 24 cut you off.</p>
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<p>10:13:57 1 were -- they were transshipping?</p> <p>10:14:00 2 A I think I said that I -- I don't have</p> <p>10:14:03 3 any record of any specific incident.</p> <p>10:14:05 4 Q By "record," sir, did you mean</p> <p>10:14:08 5 recollection or record?</p> <p>10:14:12 6 A I guess one would lead to the other,</p> <p>10:14:14 7 but whichever. I don't remember any specific</p> <p>10:14:17 8 incident.</p> <p>10:14:17 9 Q Look at 292, if you would, Adams</p> <p>10:14:23 10 28486. Tell me if you have seen this, before.</p> <p>10:14:23 11 (Deposition Exhibit 292</p> <p>10:14:40 12 was marked.)</p> <p>10:14:41 13 A Yes, I have.</p> <p>10:14:45 14 Q (By Mr. Collins) You're the author</p> <p>10:14:46 15 of this document on or about June 26, '98, in the</p> <p>10:14:51 16 normal course of your duties?</p> <p>10:14:52 17 A Same answer as the other one. It's</p> <p>10:14:54 18 not signed, but I -- it's a fair assumption.</p> <p>10:14:57 19 Q Why did you write this letter?</p> <p>10:15:00 20 A My -- my -- my -- excuse me.</p> <p>10:15:07 21 It looks like I'm saying:</p> <p>10:15:09 22 Hey, you guys, if you're thinking about doing</p> <p>10:15:13 23 this, don't do it.</p> <p>10:15:23 24 Q Did you have reason to believe that</p>	<p>10:16:25 1 A That's all right.</p> <p>10:16:26 2 Q Post-IPO, there was more gray</p> <p>10:16:30 3 marketing that went on with regard to Adams</p> <p>10:16:33 4 products, and not just in Canada, correct?</p> <p>10:16:36 5 A Post-IPO. I'm sorry. That's a long</p> <p>10:16:39 6 period of time. Can you -- can you narrow it down</p> <p>10:16:40 7 a little bit?</p> <p>10:16:41 8 Q Not a problem.</p> <p>10:16:42 9 What I'm getting to is this:</p> <p>10:16:45 10 At this point, as you sit in your chair right now,</p> <p>10:16:49 11 you are sensitive to gray marketing issues. I</p> <p>10:16:51 12 presume, and I presume that once you hear of gray</p> <p>10:16:54 13 marketing, you probably want to inquire to find</p> <p>10:16:59 14 out what's going on; is that fair?</p> <p>10:17:03 15 A As I sit in this chair. We had said</p> <p>10:17:13 16 as a company that we are going to market our</p> <p>10:17:15 17 product through -- I don't remember the</p> <p>10:17:19 18 terminology, but classic or standard lines of</p> <p>10:17:26 19 distribution. That does not include what you -- I</p> <p>10:17:30 20 guess you generally refer to as big-box stores,</p> <p>10:17:33 21 for example, United States.</p> <p>10:17:38 22 I think once you have made</p> <p>10:17:39 23 that statement as a company, and especially since</p> <p>10:17:45 24 it's Adams Golf and I'm Adams, that to follow up</p>

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<p>10:17:48 1 on the word "sensitive," I would be sensitive to</p> <p>10:17:51 2 the fact that we did what we said we were going to</p> <p>10:17:54 3 do</p> <p>10:17:54 4 Q Sure. Accordingly, you would be</p> <p>10:18:02 5 sensitive to know whether gray marketing is going</p> <p>10:18:04 6 on, correct?</p> <p>10:18:07 7 A You mean would I want to know if it</p> <p>10:18:09 8 was going on?</p> <p>10:18:10 9 Q Yes.</p> <p>10:18:15 10 A I'm sure I would want to know as much</p> <p>10:18:17 11 as I could about everything.</p> <p>10:18:20 12 Q Okay. Let's talk about how much and</p> <p>10:18:21 13 what you'd like to know about gray marketing.</p> <p>10:18:23 14 You'd like to know, I presume,</p> <p>10:18:26 15 the number of clubs involved. Is that fair?</p> <p>10:18:29 16 MR. BESSETTE: Can we figure</p> <p>10:18:30 17 out when we're talking about, because we're</p> <p>10:18:30 18 just --</p> <p>10:18:33 19 THE WITNESS: I was just going</p> <p>10:18:34 20 to ask that.</p> <p>10:18:35 21 MR. BESSETTE: -- in</p> <p>10:18:36 22 generalities here.</p> <p>10:18:37 23 MR. COLLINS: Well, you know,</p> <p>10:18:37 24 yeah, this is a general question, and this is</p>	<p>10:19:45 1 Q Okay. For the moment, I want to know</p> <p>10:19:53 2 what your general procedure is, how you would</p> <p>10:19:57 3 react, what is, in your view, the appropriate way</p> <p>10:20:00 4 to act when there are reports of gray marketing.</p> <p>10:20:03 5 And then as the day goes on, we can ask more about</p> <p>10:20:06 6 specific instances pre- and post-IPO.</p> <p>10:20:10 7 But in general, as a CEO of</p> <p>10:20:12 8 Adams Golf, what is, in your opinion, the</p> <p>10:20:15 9 appropriate response?</p> <p>10:20:17 10 A If I had -- this is all hypothetical,</p> <p>10:20:25 11 so I'm going to be a little slow with my answer</p> <p>10:20:27 12 here.</p> <p>10:20:27 13 Q Take your time, sir.</p> <p>10:20:29 14 A If I have knowledge of product,</p> <p>10:20:33 15 significant amounts of product showing up at</p> <p>10:20:46 16 nonaccredited channels of distribution, I would</p> <p>10:20:54 17 have a concern, and I would want to find out where</p> <p>10:21:04 18 they were coming from. I guess -- I'm trying to</p> <p>10:21:06 19 think of my course of action. That would be my</p> <p>10:21:08 20 first course of order, you know, where are they</p> <p>10:21:10 21 getting this stuff.</p> <p>10:21:22 22 Q Okay. Would you want to find out --</p> <p>10:21:28 23 well, in your answer, of course, you refer to</p> <p>10:21:30 24 significant amounts of product. And you know my</p>
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<p>10:18:41 1 directed on the basis of Mr. Adams' knowledge of</p> <p>10:18:44 2 industry, his experience with Adams Golf. I'm</p> <p>10:18:49 3 asking what are the relevant considerations once</p> <p>10:18:51 4 there is a suspicion or a reason to be concerned</p> <p>10:18:57 5 about gray marketing.</p> <p>10:18:57 6 MR. BESSETTE: And for him as</p> <p>10:18:57 7 a CEO at the time, or, just so I'm clear, what are</p> <p>10:19:00 8 we talking about?</p> <p>10:19:01 9 MR. COLLINS: I think in -- I</p> <p>10:19:02 10 think the consideration right now, especially</p> <p>10:19:04 11 since we are dealing with something that happened</p> <p>10:19:07 12 eight years ago, I'm asking on the basis of</p> <p>10:19:11 13 Mr. Adams' considerable experience and background,</p> <p>10:19:14 14 what are the relevant factors.</p> <p>10:19:17 15 Q (By Mr. Collins) So again, once you</p> <p>10:19:19 16 are apprised of the possibility of gray marketing,</p> <p>10:19:21 17 what are the things you want to know?</p> <p>10:19:27 18 A Assuming I were apprised of gray</p> <p>10:19:34 19 marketing, because I'm -- well, let me -- can I --</p> <p>10:19:36 20 I have to ask you a question.</p> <p>10:19:38 21 Q Please</p> <p>10:19:39 22 A Are you asking me to answer what</p> <p>10:19:41 23 happened, or are you asking me to answer how I</p> <p>10:19:43 24 would react if it happened?</p>	<p>10:21:33 1 next question is: What do you mean by significant</p> <p>10:21:35 2 amounts of product?</p> <p>10:21:35 3 A Right.</p> <p>10:21:35 4 Q But I gather, Mr. Adams, you wouldn't</p> <p>10:21:39 5 be concerned if you had a report that there were</p> <p>10:21:42 6 two gray market clubs showing up in a retailer in</p> <p>10:21:48 7 Poughkeepsie. That wouldn't bother you?</p> <p>10:22:00 8 A No.</p> <p>10:22:00 9 Q It might bother you a little bit more</p> <p>10:22:02 10 if the retailer in Poughkeepsie was Costco, as</p> <p>10:22:04 11 opposed to a mom-and-pop shop. Is that fair?</p> <p>10:22:08 12 A No.</p> <p>10:22:09 13 Q What --</p> <p>10:22:09 14 A It would not bother me.</p> <p>10:22:12 15 Q Okay. Now, we change the</p> <p>10:22:14 16 hypothetical from two clubs to 200 clubs, a</p> <p>10:22:18 17 retailer in Poughkeepsie. Does that bother you?</p> <p>10:22:21 18 MR. BESSETTE: Let me just</p> <p>10:22:22 19 object. This is calling for a lot of speculation</p> <p>10:22:24 20 and hypotheticals without a lot of circumstance</p> <p>10:22:27 21 behind it, so I think it's vague and speculative.</p> <p>10:22:30 22 MR. COLLINS: Okay.</p> <p>10:22:30 23 MR. BESSETTE: And</p> <p>10:22:32 24 hypothetical.</p>

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<p>10:22:32 1 Q (By Mr Collins) Yeah, and what I'm 10:22:33 2 really asking for are -- are the criteria you use 10:22:37 3 to judge possible instances of gray marketing 10:22:42 4 MR BESSETTE: That's a better 10:22:43 5 question. Maybe just let him answer that 10:22:45 6 MR COLLINS: Good. 10:22:47 7 A Okay. 10:22:48 8 Q (By Mr Collins) So the criteria -- 10:22:49 9 yeah, I think you just testified to such, that a 10:22:51 10 report of two gray-marketed clubs in Poughkeepsie 10:22:55 11 don't constitute significant amounts of product. 10:22:58 12 So the next question is: Do 10:23:01 13 200 clubs constitute, at one location in 10:23:06 14 Poughkeepsie, significant amounts of product? 10:23:08 15 MR BESSETTE: Same objection. 10:23:09 16 It's hypothetical. You know, why don't you ask 10:23:11 17 him what his criteria is instead of dancing around 10:23:15 18 with hypotheticals? 10:23:17 19 Q (By Mr Collins) You can go ahead. 10:23:19 20 A Okay. Again. Which one am I 10:23:20 21 answering now? Am I answering the hypothetical or 10:23:23 22 am I answering the 200 clubs? 10:23:25 23 Q Well, Paul's a good guy, but I'm the 10:23:28 24 one asking the questions here, and Paul's job is</p>	<p>10:24:28 1 Number one, in my position, 10:24:37 2 which is, I think, how you're asking me the 10:24:37 3 question, I'm always concerned about any problem 10:24:40 4 or perceived problem. I have to be. That's my 10:24:44 5 job. If I think that the problem is something 10:24:54 6 that needs attention -- and again, I don't like 10:24:57 7 that wording because every problem needs attention 10:25:00 8 to some degree, and I don't want to pretend here 10:25:04 9 like I'm ignoring my customers and so on. 10:25:06 10 But in retrospect, the only -- 10:25:09 11 the only background I have is what was going on. 10:25:12 12 What was going on pre-IPO and during the IPO is we 10:25:18 13 were shipping more product than we had in the 10:25:20 14 entire history of the company beforehand. The 10:25:24 15 Tight Lies was the hottest selling club in its 10:25:27 16 category of golf. 10:25:29 17 If a few pieces showed up at a 10:25:33 18 Costco or a gas station -- I keep referring to a 10:25:36 19 gas station because that actually happened once -- 10:25:39 20 you know, that's going to happen. I mean, how 10:25:41 21 they got them, I don't know how they got them. 10:25:45 22 My issue is to -- to -- or my 10:25:48 23 job, my responsibility is to look at it on an 10:25:55 24 overview, and if it -- if it looks like it's</p>
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<p>10:23:30 1 to object. 10:23:31 2 A Okay. 10:23:31 3 Q So the question is: When you apply 10:23:34 4 your criteria and you are analyzing whether it is 10:23:39 5 significant amounts of product showing up, are 200 10:23:43 6 clubs at a Poughkeepsie site, a single site in 10:23:47 7 Poughkeepsie, significant amounts of product? 10:23:51 8 MR BESSETTE: Objection, 10:23:52 9 calls for hypothetical, inadequate basis for 10:23:55 10 circumstance and an answer, so it's speculative. 10:23:59 11 Q (By Mr Collins) You may answer. 10:24:00 12 A So am I supposed to answer now? 10:24:02 13 MR BESSETTE: Yes. 10:24:03 14 Q (By Mr Collins) If you would. 10:24:04 15 MR BESSETTE: If you can. 10:24:04 16 A Well, I real -- I'd be -- I can 10:24:05 17 answer hypothetical with hypothetical. That's all 10:24:07 18 I can do. 10:24:09 19 Q (By Mr Collins) Sure. 10:24:11 20 A You referred specifically to Costco, 10:24:13 21 and you referred specifically to a number of 10:24:18 22 clubs. Whether it's 3 or 13 or 140 or 216, or, 10:24:23 23 you know, so on. I mean, I guess we can keep 10:24:26 24 increasing the amount.</p>	<p>10:25:56 1 something that's going to impact us, then I take 10:26:00 2 action. I mean, you're going to ask me, again, I 10:26:03 3 guess: Well, you know, does that start at 200 10:26:07 4 pieces in Poughkeepsie or 300 pieces someplace 10:26:12 5 else? 10:26:12 6 That's impossible for me to 10:26:13 7 answer. I have -- we have to -- you know, we were 10:26:15 8 shipping -- at the time, we were shipping, I don't 10:26:18 9 know, I think 100,000 pieces in one month or 10:26:21 10 something like that. So on the one hand you're 10:26:26 11 always sensitive to customer problems, but on the 10:26:29 12 other hand you just have to analyze the situation 10:26:31 13 as it -- as it really happens. 10:26:34 14 Q Sure. So if it is something that is 10:26:38 15 going to affect us, then you take action? Did I 10:26:41 16 hear that correctly? 10:26:43 17 A If it's something I think is going to 10:26:45 18 affect us. I mean, I don't always know. 10:26:47 19 Q Sure. And one way to take action, if 10:26:49 20 you think gray marketing is going to affect you, 10:26:52 21 is to send Beebe to Canada to find out the extent 10:26:55 22 of the problem there; is that accurate? 10:26:58 23 MR BESSETTE: Objection, 10:26:59 24 misstates testimony.</p>

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<p>10:27:03 1 A Yeah. We kind of jumped from 10:27:06 2 Poughkeepsie to Canada here. I think I testified 10:27:09 3 earlier that in Canada we had a new distributor 10:27:11 4 and a new distributor to golf equipment. And -- 10:27:13 5 and when Chris went to Canada, it was a 10:27:16 6 multipurpose, if I remember correctly, a 10:27:18 7 multipurpose visit. And that's, you know, 10:27:20 8 partially to assess them to see if there's a real 10:27:23 9 problem, to see what we can do about -- the real 10:27:26 10 objective was about helping them increase their 10:27:29 11 distribution, so you know, again, you make 10:27:32 12 decisions based on the circumstances. 10:27:35 13 Q (By Mr. Collins) Sure. Well, what 10:27:36 14 other things do you do to take action besides 10:27:47 15 investigate? 10:27:47 16 MR. BESSETTE: I'm not quite 10:27:48 17 sure I understand. 10:27:49 18 A Yeah, I'm not quite sure I do either. 10:27:51 19 Again, I don't want to appear argumentative, 10:27:53 20 but -- 10:27:53 21 Q (By Mr. Collins) You're not 10:27:54 22 argumentative. 10:27:54 23 A -- you have to be more -- more 10:27:56 24 specific than that, please.</p>	<p>10:28:52 1 could answer the question. 10:28:52 2 A Could you repeat the question? 10:28:54 3 Q Not a problem. 10:28:55 4 Once you conclude that gray 10:28:57 5 marketing is something that is going to affect us 10:29:01 6 or may affect us, then what is the range of action 10:29:04 7 available to you? 10:29:05 8 MR. BESSETTE: Objection, 10:29:07 9 calls for hypothetical. 10:29:08 10 THE WITNESS: Right. 10:29:08 11 MR. BESSETTE: And 10:29:11 12 speculation. 10:29:11 13 A You're -- you said that you were 10:29:13 14 asking me, you know, based on my expertise as a 10:29:16 15 CEO, et cetera; is that correct? I mean, how I 10:29:21 16 would proceed? 10:29:21 17 Q (By Mr. Collins) Yes. 10:29:22 18 A What I would do, if there -- in this 10:29:24 19 hypothetical situation, if there were a problem, I 10:29:26 20 would ask the individual whose area of 10:29:34 21 responsibility under which it fell, say it was a 10:29:42 22 quality problem, or whatever, to get back to me 10:29:42 23 with his analysis or her analysis, as the case may 10:29:47 24 be, and -- series of recommendations and we would</p>
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<p>10:27:57 1 Q You said a moment ago: If it is 10:27:59 2 something that is going to affect us, then I take 10:28:02 3 action 10:28:02 4 A Right. 10:28:02 5 Q My question is: What action do you 10:28:04 6 take? 10:28:04 7 A Well, you asked me a hypothetical 10:28:07 8 question and I was giving you a hypothetical 10:28:08 9 answer. So if we're going to stay in the world 10:28:10 10 of -- of hypothetical questions -- 10:28:12 11 Q Well, you know, this isn't all that 10:28:14 12 hypothetical, because you are an experienced CEO 10:28:17 13 with experience with regard to this particular 10:28:19 14 question, so the -- the -- what I would like you 10:28:23 15 to answer, Mr. Adams, is: What is the range of 10:28:27 16 action that you have available to you, if it -- if 10:28:33 17 it, the gray marketing, is something that's going 10:28:35 18 to affect us? 10:28:36 19 MR. BESSETTE: That is a 10:28:37 20 hypothetical, Todd. I mean, why don't you ask him 10:28:40 21 about what actually happened at Adams Golf pre-IPO 10:28:47 22 and use facts instead of asking him these kind of 10:28:49 23 general hypotheticals. 10:28:50 24 Q (By Mr. Collins) Please, if you</p>	<p>10:29:51 1 go from there. 10:29:57 2 MR. BESSETTE: Todd, we've 10:29:58 3 been going about an hour, so let me know when 10:30:01 4 you're ready for a break. 10:30:01 5 MR. COLLINS: We've got to 10:30:03 6 be here -- just a couple more questions on this 10:30:04 7 line and then we'll break. You know, let's break 10:30:13 8 now. 10:30:15 9 THE WITNESS: Breaking 10:30:21 10 MR. PARKER: All right. We're 10:30:22 11 going off the record at 10:30 a.m. This is the 10:30:24 12 end of Tape 1. 10:30:24 13 (A recess was taken from 10:40:18 14 10:30 to 10:40.) 10:40:20 15 MR. PARKER: We are now back 10:40:21 16 on the record at 10:40 a.m. 10:40:24 17 Q (By Mr. Collins) Before the break, 10:40:26 18 you said: We market our product through classic 10:40:30 19 and standard lines of distribution, not big-box 10:40:36 20 stores. 10:40:36 21 That's -- that's the case 10:40:38 22 today and that was the case at the time of the 10:40:41 23 IPO, correct? 10:40:42 24 A It's not the case today.</p>

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<p>11:00:55 1 Q Yes.</p> <p>11:00:56 2 A To the best of my knowledge</p> <p>11:01:00 3 Q Were you concerned that, as a result</p> <p>11:01:01 4 of the appearance of Adams product in Costcos,</p> <p>11:01:08 5 that retailers thought that the -- Costco was</p> <p>11:01:13 6 buying from Adams?</p> <p>11:01:19 7 MR. BESSETTE: Can I get that</p> <p>11:01:21 8 back, please.</p> <p>11:01:22 9 MR. COLLINS: Let me rephrase</p> <p>11:01:23 10 it</p> <p>11:01:24 11 Q (By Mr. Collins) Were you concerned</p> <p>11:01:27 12 that Adams' authorized retailers thought that</p> <p>11:01:30 13 Adams was selling directly to Costco?</p> <p>11:01:40 14 A Well, I would have been concerned if</p> <p>11:01:42 15 they were. Let's put it that way.</p> <p>11:01:44 16 Q You have to explain that, if you</p> <p>11:01:45 17 would.</p> <p>11:01:46 18 A We gave our word that we sold through</p> <p>11:01:55 19 normal channels of distribution. If somebody</p> <p>11:01:58 20 thought we were lying, I would be concerned.</p> <p>11:02:01 21 Q Sure. Did Gonsalves respond to this</p> <p>11:02:40 22 memo?</p> <p>11:02:41 23 A I don't remember.</p> <p>11:02:41 24 Q Did you ever determine whether there</p>	<p>11:04:02 1 retailers or distributors from transshipping?</p> <p>11:04:10 2 A I think that the -- to the best of</p> <p>11:04:18 3 our ability, if we felt that a retailer were</p> <p>11:04:25 4 transshipping, again, I'm getting hypothetical</p> <p>11:04:29 5 here, we would -- I guess we would do whatever we</p> <p>11:04:37 6 could to make sure that didn't happen.</p> <p>11:04:42 7 Q And I showed you before Exhibits 291</p> <p>11:04:45 8 and 292, which were your letters of June 26, '98,</p> <p>11:04:50 9 to King Par and Manatee.</p> <p>11:04:55 10 A Right.</p> <p>11:04:55 11 Q Was that part of your efforts to try</p> <p>11:04:57 12 to prevent transshipping from happening?</p> <p>11:05:00 13 A I think, as I testified, those</p> <p>11:05:01 14 letters were kind of like: Hey, if you're</p> <p>11:05:04 15 thinking about this, don't do it.</p> <p>11:05:05 16 Q And was the lawsuit one of the</p> <p>11:05:08 17 ways -- the bill of discovery, one of the ways you</p> <p>11:05:12 18 tried to prevent transshipping from occurring?</p> <p>11:05:15 19 A I -- no, I don't think you can state</p> <p>11:05:19 20 that, though -- I mean, the bill of discovery was</p> <p>11:05:22 21 our attempt to -- to base -- to -- really to do</p> <p>11:05:27 22 two things: If it were going on or if Costco were</p> <p>11:05:34 23 planning on having it go on, to force them to tell</p> <p>11:05:38 24 us where it was coming from.</p>
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<p>11:02:44 1 was language in our purchase order that precludes</p> <p>11:02:46 2 selling to other retailers?</p> <p>11:02:50 3 A I don't remember that. I don't</p> <p>11:02:53 4 remember what language we had.</p> <p>11:02:57 5 Q Do you know whether as of the time of</p> <p>11:02:59 6 this memo there was any obligation on the part of</p> <p>11:03:03 7 authorized retailers and distributors not to</p> <p>11:03:07 8 transship?</p> <p>11:03:14 9 A I'm struggling with the word</p> <p>11:03:17 10 "obligation," because that's -- my interpretation</p> <p>11:03:21 11 is that's a -- a legal arrangement, and I don't --</p> <p>11:03:26 12 I mean, I don't have an answer for that.</p> <p>11:03:29 13 Q Was there a legal obligation at the</p> <p>11:03:32 14 time?</p> <p>11:03:32 15 A I -- I don't think we -- we didn't</p> <p>11:03:34 16 have any, you know, legal contracts or contracts</p> <p>11:03:38 17 by lawyers written up with our retailers.</p> <p>11:03:40 18 Q Was there any other non -- was there</p> <p>11:03:44 19 any other obligation, not of a legal nature,</p> <p>11:03:48 20 preventing the retailers or distributors from</p> <p>11:03:53 21 transshipping?</p> <p>11:03:54 22 A Would you repeat that, please.</p> <p>11:03:55 23 Q Apart from any legal obligation, was</p> <p>11:03:58 24 there any other sort of obligation that prevented</p>	<p>11:05:40 1 And secondly, I think the</p> <p>11:05:42 2 other objective was to give our people, our</p> <p>11:05:48 3 salespeople, a -- a vehicle, for lack of a better</p> <p>11:05:51 4 word, that says: Look, you know, if it ever comes</p> <p>11:05:56 5 up, we don't sell to Costco. And not only do we</p> <p>11:05:58 6 not sell them, we sue them.</p> <p>11:06:00 7 I think those would be the --</p> <p>11:06:04 8 the two objectives.</p> <p>11:06:13 9 Q Okay. What was the objective of the</p> <p>11:06:13 10 press release with regard to the bill of</p> <p>11:06:13 11 discovery?</p> <p>11:06:13 12 A To get the story out. As a small</p> <p>11:06:16 13 company, nonpublic company at the time, we didn't</p> <p>11:06:18 14 have a -- much of a vehicle to tell a story, and</p> <p>11:06:22 15 we felt that this was a way to -- to nip anything</p> <p>11:06:28 16 in the bud that might come up if it ever were to</p> <p>11:06:30 17 come up.</p> <p>11:06:34 18 Q On Exhibit 293, the first sentence</p> <p>11:06:36 19 reads: As we proceed, understand that we're</p> <p>11:06:39 20 taking on the 800 -- is that 800-pound gorilla?</p> <p>11:06:43 21 A That would be my interpretation, yes.</p> <p>11:06:45 22 Q And they've done this 1,000 times.</p> <p>11:06:48 23 A Yes.</p> <p>11:06:48 24 Q Costco is the 800-pound gorilla?</p>

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<p>11:53:23 1 mean, do you want me to list every risk that I can</p> <p>11:53:26 2 think of that's --</p> <p>11:53:28 3 Q And --</p> <p>11:53:29 4 A Now pertaining to then --</p> <p>11:53:31 5 Q Please.</p> <p>11:53:31 6 A -- is that what you're asking me?</p> <p>11:53:37 7 Q If you would.</p> <p>11:53:37 8 A Competition, some -- something</p> <p>11:53:45 9 causing the market to, you know, crash, some --</p> <p>11:53:50 10 some negative effect on the marketplace, I guess,</p> <p>11:54:00 11 a major quality problem with your product that --</p> <p>11:54:07 12 that taints the company. Let me think. I'm sure</p> <p>11:54:17 13 there's lots of them. I'm just doing the best I</p> <p>11:54:20 14 can here. Competition I don't know -- did I say</p> <p>11:54:29 15 competition? I'm sorry. I'm --</p> <p>11:54:32 16 Q No. No. I --</p> <p>11:54:33 17 A I'm drifting here. But so many, you</p> <p>11:54:39 18 know, knock-offs, counterfeits. Certainly those</p> <p>11:54:46 19 are what comes to mind.</p> <p>11:54:47 20 Q And what you just testified to were</p> <p>11:54:50 21 risks that applied to everybody in the golf</p> <p>11:54:52 22 manufacturing industry at the time of the IPO,</p> <p>11:54:59 23 generally?</p> <p>11:55:00 24 A I can only be, you know, as -- as</p>	<p>11:56:28 1 "over time," you'd have to define that for me, but</p> <p>11:56:30 2 yes.</p> <p>11:56:31 3 Q Do you happen to recall at the time</p> <p>11:56:33 4 of the IPO what the average retail and average</p> <p>11:56:37 5 wholesale prices were?</p> <p>11:56:39 6 A No, I do not remember.</p> <p>11:56:43 7 Q Okay. And then this statement goes</p> <p>11:56:44 8 on to read: Accordingly, the company's continued</p> <p>11:56:50 9 growth and success depend on its ability to</p> <p>11:56:53 10 successfully develop and introduce new products</p> <p>11:56:54 11 that meet with consumer and retailer acceptance.</p> <p>11:56:57 12 Is that an accurate statement</p> <p>11:56:59 13 as of the time of the IPO?</p> <p>11:57:01 14 A I'd say that's a fair comment, yes.</p> <p>11:57:04 15 Q And then this goes on: With respect</p> <p>11:57:06 16 to retailers, the company must ensure its products</p> <p>11:57:09 17 continue to offer retailers high margins and are</p> <p>11:57:12 18 not discounted.</p> <p>11:57:14 19 Is that an accurate statement</p> <p>11:57:16 20 as of the time of the IPO?</p> <p>11:57:20 21 MR. BESSETTE: Well, let me</p> <p>11:57:21 22 object That's an opinion, obviously</p> <p>11:57:24 23 Q (By Mr. Collins) You may answer.</p> <p>11:57:31 24 A Okay. My answer is that the key word</p>
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<p>11:55:04 1 accurate as I am, I can only be accurate for us --</p> <p>11:55:08 2 pardon me -- but I think those things were</p> <p>11:55:15 3 generally pervasive throughout the industry</p> <p>11:55:18 4 Q Let me switch you, if I may, to</p> <p>11:55:30 5 Page 160. In the first full paragraph of text, it</p> <p>11:55:40 6 reads, second sentence here: Golf clubs tend to</p> <p>11:55:44 7 have a limited life cycle, and at some point the</p> <p>11:55:48 8 company can expect the sales of its clubs will</p> <p>11:55:52 9 diminish and that average selling prices will</p> <p>11:55:56 10 decline.</p> <p>11:55:56 11 Was that accurate, an accurate</p> <p>11:55:58 12 statement, in your opinion, at the time of the</p> <p>11:56:00 13 IPO?</p> <p>11:56:00 14 A As generally applied to the golf</p> <p>11:56:02 15 industry, I think yes. Excuse me.</p> <p>11:56:04 16 Q And -- I'm sorry.</p> <p>11:56:05 17 And was that also an accurate</p> <p>11:56:08 18 statement as of the time of the IPO with --</p> <p>11:56:10 19 specifically with regard to the Tight Lies?</p> <p>11:56:15 20 A Yes.</p> <p>11:56:15 21 Q And the average sales -- selling</p> <p>11:56:17 22 price did decline over time with regard to the</p> <p>11:56:20 23 Tight Lies subsequent to the IPO, correct?</p> <p>11:56:26 24 A I mean, I would say yes. I would say</p>	<p>11:57:34 1 here is "offer." All you can do is offer. What</p> <p>11:57:36 2 they do, if they -- if they decide to, for some</p> <p>11:57:43 3 reason or another, who knows, do something with</p> <p>11:57:47 4 their margin, I mean, you don't have control over</p> <p>11:57:49 5 that. I only have control over what we sell to</p> <p>11:57:52 6 these retailers.</p> <p>11:57:53 7 Q Okay.</p> <p>11:57:54 8 A I don't think we have control, but we</p> <p>11:57:55 9 have -- do our best job.</p> <p>11:57:58 10 Q So -- so are you saying that at the</p> <p>11:58:01 11 time of the IPO, you couldn't control what the</p> <p>11:58:06 12 retailer sold his product at?</p> <p>11:58:11 13 A I'm saying at the time of the IPO,</p> <p>11:58:17 14 you had arguably the hottest product in the entire</p> <p>11:58:23 15 golf industry, and what -- there were no issues</p> <p>11:58:26 16 involving what they sold them for and so on, at</p> <p>11:58:29 17 least nothing that I was aware of. Our issues</p> <p>11:58:32 18 were trying to meet demand</p> <p>11:58:37 19 Q Okay. Did you believe that at the</p> <p>11:58:39 20 time of the IPO it was accurate that the company</p> <p>11:58:42 21 must ensure its products continue to offer</p> <p>11:58:46 22 retailers high margins and are not discounted?</p> <p>11:58:49 23 MR. McEVROY: Todd, I'm just</p> <p>11:58:50 24 going to object again --</p>

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<p>11:58:50 1 THE REPORTER: I'm sorry. I 11:58:50 2 can barely hear you I'm just going to object 11:58:50 3 again -- 11:58:50 4 MR. McEVOY: Sorry Just 11:58:54 5 going to object again to you asking him about an 11:58:57 6 analysis and summary that he did not prepare, 11:58:58 7 didn't sign, and doesn't recall stating. 11:59:01 8 MR. BESSETTE: And I'm just 11:59:02 9 going to object to the -- asking for the accuracy 11:59:04 10 of somebody else's opinion. 11:59:07 11 Q (By Mr. Collins) Please, go ahead. 11:59:09 12 A Finally me? 11:59:12 13 Q Well, Michelle -- maybe Michelle 11:59:14 14 could chime in, but go ahead. 11:59:14 15 A Right. 11:59:16 16 Again, all we can do is all we 11:59:21 17 can do. Make good, new, innovative product and 11:59:25 18 price it in a way that it's attractive to our 11:59:38 19 customers. 11:59:38 20 Q As of the I -- the time of the IPO, 11:59:41 21 did you have an opinion as to the ramifications 11:59:48 22 and consequences, if any, if the company failed to 11:59:51 23 ensure that its products continued to offer 11:59:54 24 retailers high margins, and if the company failed</p>	<p>12:01:36 1 the industry, state of the company, so to speak. 12:01:43 2 Q Who asked the questions, please? 12:01:50 3 A While I don't remember specifically, 12:01:51 4 generally, underwriters, the -- excuse me -- the 12:01:55 5 underwriters, attorneys, financial people, a 12:02:03 6 variety of experts. 12:02:07 7 Q You -- there were drafting sessions 12:02:14 8 involving underwriters, lawyers, and company 12:02:17 9 people with respect to the prospectus; is that 12:02:19 10 accurate? 12:02:20 11 A Yes, it is. 12:02:21 12 Q Were you, as CEO, one of the 12:02:25 13 participants in those drafting sessions, or did 12:02:27 14 you leave that to other persons? 12:02:29 15 A I don't remember specifically. 12:02:34 16 Q Were you ever given a draft of the 12:02:38 17 prospectus to make comments on or changes to? 12:02:44 18 A I believe so. 12:02:44 19 Q And did you, in fact, make comments 12:02:47 20 or changes? 12:02:49 21 A I'm sure I did. 12:02:55 22 Q Let's look at the risk factor section 12:02:57 23 beginning on Page 6, please. 12:02:59 24 A Page 6.</p>
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<p>11:59:56 1 to ensure that its products were not discounted? 12:00:01 2 MR. BESSETTE: Objection, 12:00:04 3 vague and ambiguous, assumes facts not in 12:00:05 4 evidence, calling for opinions. 12:00:15 5 A At the time of the IPO, our -- my 12:00:21 6 concentration on -- was on the incredible growth 12:00:25 7 of the company, building the infrastructure to -- 12:00:30 8 to assist with this growth, you know, meeting the 12:00:36 9 demand that -- that we had. 12:00:40 10 I -- I -- I can't remember 12:00:44 11 that we, you know, sat there and involved -- or I 12:00:48 12 sat there and involved myself in that particular 12:00:50 13 thought process. 12:00:51 14 Q (By Mr. Collins) Now, let me ask 12:00:56 15 you, to the happiness of everyone around the 12:01:00 16 table, that you look at the document that I 12:01:02 17 believe you did participate in drafting. This is 12:01:05 18 Exhibit 72. 12:01:08 19 Have you seen this document 12:01:09 20 before, sir? 12:01:23 21 A This is the prospectus. 12:01:24 22 Q Now, what was your role in the 12:01:27 23 drafting of the prospectus, please? 12:01:29 24 A I was asked many questions about us,</p>	<p>12:03:02 1 Q It runs through -- I suppose Page 14 12:03:16 2 through -- 12:03:16 3 MR. BESSETTE: Eight pages of 12:03:17 4 risk factors. 12:03:22 5 Q (By Mr. Collins) And I -- I'm -- 12:03:27 6 MR. COLLINS: One sec. 12:03:29 7 I just knocked this camera 12:03:33 8 again. Is it all right? 12:03:35 9 MR. MAHONEY: It's fine. 12:03:36 10 THE WITNESS: Want me to dodge 12:03:37 11 one way or the other? 12:03:40 12 Q (By Mr. Collins) You read over the 12:03:41 13 risk factors section of the prospectus before you 12:03:46 14 signed the registration statement, didn't you? 12:03:48 15 A I would have, yes. 12:03:49 16 Q Okay. And are there any risks here 12:03:54 17 that were left out; that is, were there any 12:03:57 18 risks -- risk factors that were, to your 12:04:00 19 recollection, considered for inclusion, but then 12:04:03 20 deleted from the document in final form? 12:04:06 21 A Not that I know of. 12:04:08 22 Q Were there any of these risk factors 12:04:11 23 listed here that you suggested didn't need to be 12:04:14 24 included or shouldn't be included?</p>

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<p>12:04:17 1 A My memory is that at the beginning I 12:04:23 2 didn't understand the process very well, so I -- I 12:04:28 3 asked some questions or I questioned some of the 12:04:30 4 decisions, but then I was -- you know, this is not 12:04:35 5 my world. I was -- this was something I had no 12:04:37 6 experience with, so maybe at that juncture only. 12:04:46 7 Q Now, to your knowledge, we -- we were 12:04:48 8 just talking a moment ago about a particular 12:04:51 9 provision of Exhibit 212, which is this 12:04:54 10 institutional sales memorandum -- 12:04:56 11 A Uh-huh. 12:04:56 12 Q -- which, as Ted quite correctly 12:05:00 13 points out, you didn't draft. 12:05:01 14 I wanted to ask you about a 12:05:03 15 particular sentence that you read on Page 160 of 12:05:06 16 Exhibit 212. This was the -- the first sentence 12:05:11 17 on the second paragraph: With respect to 12:05:14 18 retailers, the company must ensure its products 12:05:17 19 continue to offer retailers high margins and are 12:05:19 20 not discounted. 12:05:21 21 Was that, in one form or 12:05:23 22 another, to your knowledge, included as a risk 12:05:26 23 factor in the prospectus? 12:05:29 24 A I have no specific knowledge.</p>	<p>12:06:25 1 I don't remember the specific 12:06:27 2 wording, and I frankly, as I sit here, can't point 12:06:30 3 my finger to it, but that's my recollection. 12:06:32 4 Q Now, if you would, turn to Page 6 of 12:06:37 5 the prospectus, which is Exhibit 72. Under 12:06:50 6 Dependence of New -- On New Product Introductions 12:06:52 7 on Certain Consumer Acceptance, I'm going to pick 12:06:56 8 out a particular sentence. 12:06:57 9 A Okay 12:06:57 10 Q And naturally, I'll ask my 12:07:01 11 convoluted, endless question, and then after I do 12:07:03 12 so, feel free to read the whole paragraph or the 12:07:07 13 whole risk section if you want. 12:07:08 14 I want you to focus, though, 12:07:09 15 on a particular sentence: A decline in demand 12:07:12 16 for -- 12:07:13 17 A Somebody give me -- thank you 12:07:16 18 MR. BESSETTE: Here. 12:07:18 19 Q (By Mr. Collins) Yeah. Thank you. 12:07:19 20 This is the second sentence 12:07:20 21 under Dependence on New Products Introductions: A 12:07:22 22 decline in demand for or average selling prices of 12:07:26 23 the Tight Lies line of products would have a 12:07:29 24 material adverse effect on the company's business,</p>
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<p>12:05:33 1 Q Can you point to where that 12:05:35 2 appears -- I'm not aware of it, so I'm just asking 12:05:38 3 if you can tell me anywhere that that appears or 12:05:40 4 words to that effect? 12:05:43 5 MR. McEVOY: Todd, do you want 12:05:43 6 us to sit here and go through the documents and -- 12:05:46 7 MR. BESSETTE: I mean, 12:05:47 8 everybody can do it the same. I mean, that's 12:05:49 9 going to waste a lot of time 12:05:51 10 MR. COLLINS: Right 12:05:52 11 THE WITNESS: You're asking me 12:05:53 12 if I know where it showed up in the prospectus and 12:05:57 13 so on? 12:05:57 14 Q (By Mr. Collins) Did the sum and 12:05:58 15 substance of that statement: With respect to 12:06:00 16 retailers, the company must ensure its products 12:06:01 17 continue to offer retailers high margins and are 12:06:04 18 not discounted, show up in the risk factors of the 12:06:08 19 prospectus, to your knowledge? 12:06:09 20 A To my knowledge, there was wording in 12:06:13 21 the prospectus about margins and price 12:06:16 22 compressions and so on and so forth that -- that 12:06:23 23 was something that you had to be aware of as a 12:06:25 24 company.</p>	<p>12:07:33 1 operating results, and financial condition. 12:07:36 2 Do you see that? 12:07:37 3 A Yes, I do. 12:07:37 4 Q Can you -- that's a true statement, 12:07:39 5 as far as you know? 12:07:40 6 A As far as I know, yes. 12:07:41 7 Q Can you tell me why that is so? 12:07:43 8 A Why that is so? 12:07:44 9 Q Uh-huh. 12:07:45 10 A You mean, if you're -- if nobody 12:07:48 11 wants your product, I would say that that would 12:07:51 12 have a serious effect on the company. 12:08:01 13 Q Okay. Okay. Well, that makes sense. 12:08:02 14 And then the average selling 12:08:04 15 prices, is that referring to selling prices at the 12:08:10 16 wholesale or retail level? 12:08:11 17 A Can you tell me where you are here, 12:08:14 18 please? 12:08:14 19 Q A decline in demand for -- 12:08:15 20 MR. BESSETTE: Same sentence. 12:08:16 21 A Oh, same sentence. Excuse me 12:08:16 22 Q (By Mr. Collins) -- or -- or average 12:08:17 23 selling prices of the Tight Lies line of products, 12:08:21 24 et cetera.</p>

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<p>13:43:32 1 A Would you repeat that, please.</p> <p>13:43:35 2 Q Did you ever investigate or ask</p> <p>13:43:38 3 somebody else to investigate whether some or all</p> <p>13:43:41 4 of the 33.8 million in sales for the quarter were</p> <p>13:43:46 5 sales that were purchased to transship to or for</p> <p>13:43:52 6 the account of gray marketers?</p> <p>13:44:00 7 A I don't remember -- pardon me again.</p> <p>13:44:03 8 I don't remember any</p> <p>13:44:08 9 investigation. It was a nonissue, as I've said</p> <p>13:44:10 10 before. Does that mean that something could have</p> <p>13:44:15 11 happened with an employee that I don't know</p> <p>13:44:17 12 anything about? You know, who knows.</p> <p>13:44:19 13 But to me -- it's hard for me</p> <p>13:44:23 14 to answer this question because you're asking me</p> <p>13:44:25 15 about something that just wasn't going on --</p> <p>13:44:27 16 Q Okay.</p> <p>13:44:27 17 A -- or didn't happen.</p> <p>13:44:46 18 Q Exhibit 57, please. Have you seen</p> <p>13:44:54 19 this document before?</p> <p>13:45:01 20 A Yes, I have.</p> <p>13:45:01 21 Q You were the author of this document?</p> <p>13:45:04 22 A Well, probably. It's not signed, and</p> <p>13:45:08 23 I think this is a classic case of my volatility,</p> <p>13:45:14 24 and this would have been one that I hoped I looked</p>	<p>13:46:39 1 them?</p> <p>13:46:40 2 A Well, it's addressed to them. I'm</p> <p>13:46:48 3 being flip. It was addressed to them.</p> <p>13:46:50 4 Q In the first paragraph, what did you</p> <p>13:46:51 5 mean: Have we been presenting a false image?</p> <p>13:46:58 6 A My image of the sales department was</p> <p>13:47:01 7 as a very efficient, high morale, on top of</p> <p>13:47:05 8 situations, you know, an area to be admired. And</p> <p>13:47:14 9 what I saw in my personal visit made me question</p> <p>13:47:17 10 there.</p> <p>13:47:17 11 Q Were you referring to the image you</p> <p>13:47:20 12 held in your mind of inside sales, or instead, the</p> <p>13:47:25 13 image that the investing public had with regard to</p> <p>13:47:28 14 Adams Golf's prospects?</p> <p>13:47:29 15 A No. This -- excuse me.</p> <p>13:47:32 16 MR. BESSETTE: Go ahead.</p> <p>13:47:33 17 A It's a personal reaction.</p> <p>13:47:42 18 Q (By Mr. Collins) In what way were</p> <p>13:47:42 19 you concerned that we had been presenting a false</p> <p>13:47:45 20 image with regard to inside sales? What was</p> <p>13:47:47 21 false?</p> <p>13:47:48 22 MR. BESSETTE: Asked and</p> <p>13:47:48 23 answered.</p> <p>13:47:48 24 But go ahead.</p>
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<p>13:45:18 1 at in the next morning and never sent out, but I</p> <p>13:45:22 2 could easily have done it.</p> <p>13:45:24 3 Q But whether you sent it or not, you</p> <p>13:45:27 4 authored this document, correct?</p> <p>13:45:28 5 A That's fair.</p> <p>13:45:29 6 Q And you authored it on or about</p> <p>13:45:31 7 August 14th in your role as CEO?</p> <p>13:45:34 8 A That's fair.</p> <p>13:45:36 9 Q Now, what -- what was going on here?</p> <p>13:45:37 10 Why -- whether you sent it or not, why did you</p> <p>13:45:39 11 write this document?</p> <p>13:45:48 12 A I had a -- I had expectations for the</p> <p>13:45:54 13 sales group: Morale, efficiency, and in a</p> <p>13:46:04 14 personal visit, I did not encounter that. I</p> <p>13:46:09 15 encountered an environment that I didn't care for.</p> <p>13:46:14 16 And as I said, in my normal,</p> <p>13:46:20 17 occasionally volatile way of handling things, I</p> <p>13:46:23 18 came up with this guilty-until-proven-innocent</p> <p>13:46:28 19 approach.</p> <p>13:46:28 20 Q And you thought the guilty parties</p> <p>13:46:32 21 were Mark Gonsalves and Ric Jarrett?</p> <p>13:46:35 22 A Well, I started with them. Let's put</p> <p>13:46:37 23 it that way.</p> <p>13:46:38 24 Q What do you mean you started with</p>	<p>13:47:52 1 A Well, I have to rely on their ability</p> <p>13:47:55 2 to give me good numbers, good forecasts, good</p> <p>13:47:58 3 market analyses and so on. And when I visit them</p> <p>13:48:04 4 and I see disarray, bickering, finger-pointing,</p> <p>13:48:12 5 you know, childish stuff going on, then, you know,</p> <p>13:48:16 6 where does it stop? It wasn't the image I had of</p> <p>13:48:22 7 the sales department.</p> <p>13:48:25 8 Q (By Mr. Collins) This visit that you</p> <p>13:48:26 9 made, was it on or about August 14th?</p> <p>13:48:32 10 A I would guess prior to, but I</p> <p>13:48:32 11 wouldn't -- I wouldn't know when</p> <p>13:48:32 12 Q How long was the visit?</p> <p>13:48:35 13 A Again, I don't remember specifically</p> <p>13:48:38 14 Q Where was sales located in relation</p> <p>13:48:40 15 to your office at the time?</p> <p>13:48:43 16 A Down the hall and to the right.</p> <p>13:48:47 17 Q Did you speak to persons in sales on</p> <p>13:48:49 18 the occasion of this visit?</p> <p>13:48:52 19 A Yes, I'm sure I spoke to one or more</p> <p>13:48:57 20 members of the sales group.</p> <p>13:49:00 21 Q In the third paragraph, there's a</p> <p>13:49:01 22 reference to George Clouse referred to as: My</p> <p>13:49:05 23 friend at Platinum.</p> <p>13:49:06 24 A Yes.</p>

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<p>13:49:06 1 Q Could you identify him further, 13:49:08 2 please. 13:49:08 3 A George is CEO of -- it was Platinum 13:49:13 4 Software then. It's -- oh, I forget their name. 13:49:18 5 Now they've changed their name. But they were 13:49:20 6 making a presentation to us about changing -- or 13:49:24 7 about upgrading our internal software package. 13:49:37 8 Q And is -- Telesales' parameters 13:49:42 9 refers to the direct -- direct marketing as 13:49:45 10 opposed to the inside sales function? 13:49:47 11 A No Telesales is inside sales. 13:49:56 12 Q Now, the conclusion at Paragraph A: 13:50:00 13 The department staff has very low morale, is that 13:50:03 14 something you encountered yourself, or is that 13:50:06 15 what someone told you? 13:50:11 16 A I would -- I would define this one as 13:50:14 17 my interpretation of what I saw. 13:50:18 18 Q Did people complain to you? 13:50:22 19 A I don't remember specifically. 13:50:37 20 Q And C: They know cheating (at least 13:50:42 21 in the form of double shipments) occurs, and a 13:50:46 22 concern that such action is quietly endorsed. 13:50:48 23 How -- on what basis did you 13:50:51 24 conclude that the inside sales staff knows that</p>	<p>13:52:02 1 how it was presented in the road show. 13:52:04 2 How was it presented in the 13:52:05 3 road show? 13:52:06 4 A As the -- as a very precised -- 13:52:14 5 excuse me, precised -- as a very precise, tight, 13:52:21 6 well-managed organization. They were one of our 13:52:25 7 stars. Bright star, I think I used 13:52:29 8 Q The next sentence reads: I realize 13:52:31 9 there are decisions we can make (like diverters), 13:52:35 10 but we must rely on these people. 13:52:38 11 What did you mean 13:52:40 12 by "diverters"? 13:52:42 13 A I don't know specifically. 13:52:44 14 Q Were you saying in this sentence -- 13:52:48 15 weren't you saying that you realized that Adams 13:52:50 16 Golf could increase sales by selling to outlets 13:52:57 17 that weren't authorized dealers by selling to 13:53:03 18 discount warehouses, for example? 13:53:06 19 A I think -- no, but I do think what I 13:53:09 20 was saying is that you want to be absolutely sure 13:53:20 21 there's not an environment where something like 13:53:23 22 that could happen. That's what I was -- I mean, 13:53:27 23 it's not a specific thing. It's just a general 13:53:30 24 lack of professionalism that I -- that I felt that</p>
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<p>13:50:54 1 cheating, at least in the form of double 13:50:57 2 shipments, occurs? 13:50:59 3 A Accusations. Somebody said: I think 13:51:05 4 somebody double-ships, something along those 13:51:08 5 lines. 13:51:08 6 Q Who said that? 13:51:10 7 A Oh, I don't remember. I don't 13:51:10 8 remember who I spoke to. 13:51:12 9 Q And was -- do you remember who the 13:51:14 10 alleged double-shipper or shippers were? 13:51:16 11 A No, I do not. 13:51:17 12 Q Was the alleged double-shipper or one 13:51:20 13 of them Jay Greaney? 13:51:22 14 A I don't remember specifically. 13:51:30 15 Q Now, on the next page in the second 13:51:36 16 full paragraph under Our Short-Term Goals. 13:51:40 17 A Our Short-Term Goals. 13:51:42 18 Q Our Short-Term Goals are to make the 13:51:44 19 Q3, Q4 numbers? 13:51:46 20 A Oh, yes. Sorry 13:51:47 21 Q It goes on at the end of the 13:51:49 22 paragraph to say -- or the paragraph continues to 13:51:55 23 say: What is the plan to resurrect this 13:52:01 24 department, return it to what I thought it was and</p>	<p>13:53:33 1 I saw. And as I said, this was an over-the-top, 13:53:38 2 guilty-until-proven-innocence response. 13:53:38 3 Q I see. 13:53:41 4 So you were concerned at the 13:53:43 5 time you wrote this that sales had been made or 13:53:46 6 might be made to diverters or customers that 13:53:53 7 weren't authorized retailers or distributors; is 13:53:56 8 that right? 13:53:56 9 A No, not at all. I think you're 13:53:58 10 putting words in my mouth. 13:53:59 11 What I said was: If you 13:54:01 12 have -- excuse me -- if you have an organization 13:54:04 13 that's not tightly managed, lots of things can 13:54:06 14 happen, and this is a -- this is an example. I 13:54:09 15 mean, I use it because it's a very egregious 13:54:14 16 example, something we would never do. But I'm 13:54:17 17 trying to make a point here: You guys get your 13:54:19 18 act together. 13:54:20 19 Q What are double shipments, when you 13:54:23 20 refer to -- as you refer to in this memo? 13:54:28 21 A They could be anything. That's a 13:54:30 22 long answer. 13:54:30 23 Q Tell me, please. I'm referring 13:54:32 24 specifically --</p>

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13:54:32 1 A Right.
 13:54:33 2 Q -- to how you referred to double
 13:54:35 3 shipments in C on Page 1. What did you mean by
 13:54:41 4 that?
 13:54:41 5 A I'm going to read C here.
 13:54:47 6 It could be, for example, a
 13:54:50 7 customer who feels that he ordered 50 pieces and
 13:54:56 8 got 100 and that we intentionally shipped 100 to
 13:54:59 9 boost our sales for that period of time. I mean,
 13:55:02 10 that could be a case.
 13:55:02 11 Q And -- and you heard accusations
 13:55:04 12 along those lines when you visited inside sales,
 13:55:08 13 correct?
 13:55:08 14 A What I knew was that I -- I've been
 13:55:13 15 through this double-shipping business, and I know
 13:55:20 16 that it's -- it's a much broader and more complex
 13:55:24 17 area than simply somebody deciding to ship an
 13:55:29 18 extra 20 or 50 pieces
 13:55:32 19 A retailer calls up and says:
 13:55:35 20 I'm going to send this stuff back. You
 13:55:38 21 double-shipped me. And we never double-shipped
 13:55:40 22 him at all, but maybe he was a little short on
 13:55:40 23 money, couldn't pay his bill or whatever, you
 13:55:43 24 know, a million reasons.

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13:55:45 1 But if you've got low morale
 13:55:47 2 and a poorly run department, all of a sudden the
 13:55:50 3 fact doesn't come out, it just comes out as
 13:55:52 4 double-shipping, and that just adds to bad morale.
 13:55:55 5 And that's the kind of stuff I was trying to
 13:55:58 6 uproot, so to speak.
 13:55:59 7 Q On the second page, the memo goes on
 13:56:01 8 to read: Apparently we've made a lot of sales
 13:56:05 9 that have been falsely reported as sales and are
 13:56:08 10 little more than consignments.
 13:56:08 11 A Uh-huh.
 13:56:09 12 Q What's the basis for that?
 13:56:11 13 A It's the same thing. And again, I
 13:56:13 14 want to emphasize that this is -- I'm not real
 13:56:15 15 proud of this memo, frankly. It's a little over
 13:56:18 16 the top, even for me, but -- it's a
 13:56:23 17 guilty-until-proven-innocent approach. You get on
 13:56:24 18 the phone with the customer and say: Hey, look,
 13:56:28 19 you know, we -- we are -- are -- our terms are
 13:56:29 20 normally 30 days, we'll give you 60. Now, for me
 13:56:33 21 to call that a consignment, of course, is a big
 13:56:36 22 stretch.
 13:56:37 23 But that's not the point. The
 13:56:39 24 point is -- because, you know, you're not -- I'm

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13:56:42 1 talking about things in a well-run, well-managed
 13:56:46 2 department that's on top of things. You know,
 13:56:50 3 you -- you just don't hear about this kind of
 13:56:52 4 stuff. I'm not saying -- of course it happens. I
 13:56:55 5 mean, good heaven's, you have human beings.
 13:56:57 6 You know, you have double
 13:57:00 7 shipments, triple shipments, no shipments. You
 13:57:03 8 know, the kind of volume that we were dealing in,
 13:57:07 9 human beings make mistakes. I was interested in
 13:57:07 10 the way the -- the way the sales department was
 13:57:11 11 being managed.
 13:57:11 12 Q So when you visited the sale -- the
 13:57:14 13 inside sales department, people made accusations
 13:57:16 14 about consignments, the recording of sales; is
 13:57:19 15 that right?
 13:57:20 16 A I think I used the word
 13:57:24 17 "consignments." I don't know if they used the
 13:57:24 18 word "consignments." As I said before, I took
 13:57:26 19 everything to -- I wanted -- I wanted Mark and Ric
 13:57:29 20 go come back to me and -- and absolutely embarrass
 13:57:32 21 me by putting this thing to bed and showing me how
 13:57:32 22 squared away they were.
 13:57:40 23 Q But as I was asking a moment ago,
 13:57:43 24 whether people in inside sales used the word

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13:57:46 1 "consignment" or not, one or more persons during
 13:57:50 2 your visit told you that there had been amounts
 13:57:55 3 falsely reported as sales that were, in fact, not
 13:57:59 4 properly recordable as sales; is that right?
 13:58:01 5 MR. BESSETTE: That misstates
 13:58:02 6 what he said.
 13:58:03 7 Q (By Mr. Collins) You may answer.
 13:58:05 8 A Again, the word "consignment" is my
 13:58:07 9 word, my interpretation. I don't know if anybody
 13:58:12 10 in the department ever brought up the word
 13:58:14 11 "consignment."
 13:58:15 12 What I'm saying is that it's
 13:58:19 13 the same -- I see the same pattern in several
 13:58:21 14 different areas. This -- this -- this
 13:58:24 15 complaining, this finger-pointing, this lack of
 13:58:26 16 professionalism, and this was supposed to be our
 13:58:29 17 bright star, our great group of people.
 13:58:33 18 And I have to -- in my role, I
 13:58:34 19 have to depend on their information. So I was
 13:58:38 20 upset just to hear this -- this bickering. I use
 13:58:43 21 that word, but it wasn't professional. It wasn't
 13:58:47 22 what it should have been.
 13:58:48 23 Q And respectfully, you didn't answer
 13:58:50 24 my question.

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<p>13:58:50 1 Did somebody tell you that 13:58:51 2 there were amounts recorded as sales that 13:58:54 3 shouldn't have been? 13:58:55 4 A I don't remember that. 13:58:58 5 Q Check July returns -- the memo goes 13:59:01 6 on -- and tell me what they'll be during the rest 13:59:04 7 of the year. 13:59:05 8 A Okay. 13:59:06 9 Q What did you mean by that? 13:59:07 10 A It means that I'm accusing you and 13:59:08 11 prove me wrong. 13:59:09 12 Q What does "checking July returns" 13:59:12 13 have to do with it? 13:59:17 14 A I guess that would be one way of 13:59:18 15 finding out if anything came back that was beyond 13:59:21 16 a normal shipping date or, you know, whatever the 13:59:24 17 parameters were. 13:59:24 18 Q So is it that you were saying that an 13:59:27 19 indication of a jump in returns in July would 13:59:32 20 substantiate or tend to substantiate the concerns 13:59:35 21 you expressed in this memo? 13:59:50 22 A I'm -- again, you know, it isn't this 13:59:51 23 one particular item. I have no knowledge then or 13:59:54 24 now that July returns were anything. It's like</p>	<p>14:01:07 1 Q (By Mr. Collins) Do you see that -- 14:01:10 2 have you seen this page before? 14:01:13 3 A Not to my recollection. 14:01:14 4 Q Did you from time to time, in your 14:01:16 5 job as CEO, analyze what the returns allowance 14:01:26 6 was? 14:01:26 7 A Well, if Darl Hatfield had expressed 14:01:28 8 a serious concern, I would probably go over it 14:01:32 9 with him. 14:01:32 10 Q Do you see that this document 14:01:34 11 indicates that the unexpected returns were 370,000 14:01:39 12 against an expense that had been expected of 14:01:45 13 494,000 for the month of July? 14:01:49 14 A I'm sorry. If you would -- 14:01:50 15 Q If you look at the last two entries 14:01:52 16 on this page. Expense expected -- 14:01:57 17 A Okay. 14:01:57 18 Q -- and then unexpected returns. 14:01:59 19 Do you see those two entries? 14:02:03 20 A Expected returns, 493; and 14:02:05 21 unexpected, 370. 14:02:08 22 Q Right. 14:02:09 23 A Okay. 14:02:10 24 Q Before you came into this conference</p>
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<p>13:59:56 1 saying: Here's a way you can prove me wrong. You 13:59:59 2 know, I don't want to give you all the ways you 14:00:02 3 can prove me wrong. You prove me wrong. Show me 14:00:09 4 that this memo is -- is completely erroneous. 14:00:09 5 Q Did you make no inquiry on July 14:00:15 6 returns after you wrote this memo? 14:00:15 7 A No. 14:00:15 8 Q You never checked? 14:00:17 9 A No. At least not that I remember 14:00:18 10 Q Okay. 14:00:18 11 A I guess that's a fairer statement. 14:00:21 12 Q Okay. Did you ever look at the 14:00:23 13 analysis of returns -- of returns allowance for 14:00:26 14 the month of July '98? 14:00:30 15 A I have no specific recollection. 14:00:33 16 Q All right. I'm going to ask you to 14:00:35 17 look at a document marked as -- 14:00:39 18 THE REPORTER: 295 14:00:41 19 Q (By Mr. Collins) 295. Adams 40594. 14:00:44 20 That needs to be marked, if I may. 14:00:44 21 A Oh, I'm sorry. Grabbed it out of 14:01:05 22 your hands. 14:01:05 23 (Deposition Exhibit 295 14:01:07 24 was marked)</p>	<p>14:02:12 1 room today, did you ever know that the unexpected 14:02:14 2 returns were in this amount in the month of July? 14:02:19 3 A It looks to me like they're under 14:02:23 4 what we thought they would be. 14:02:26 5 Q Did you ask Gonsalves to report back 14:02:30 6 to you on what July returns were? 14:02:34 7 A I asked him to report back to me on 14:02:36 8 the condition of the sales department. 14:02:39 9 Q So as far as you know, after you 14:02:40 10 wrote this memo, you never received any additional 14:02:45 11 information with regard to July returns before 14:02:48 12 this moment today? 14:02:50 13 A I don't remember anything. 14:02:53 14 Q Let's go back, again, if we may, to 14:02:56 15 57. Farther down on the page, the paragraph 14:03:09 16 reads -- 14:03:09 17 A Excuse me. Page 1 or 2? 14:03:11 18 Q I'm so sorry. Second page. 14:03:11 19 A Okay. 14:03:14 20 Q Page 452. 14:03:16 21 A Okay. 14:03:16 22 Q I don't think I need to write 14:03:18 23 anymore. The issue is squarely on the table, and 14:03:20 24 I'll clarify what is making me sick. Are we</p>

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<p>14:29:54 1 Hypothetically, you -- you sit 14:29:57 2 down with your sales group. They have a handle on 14:30:02 3 current conditions. They have a handle on 14:30:03 4 competitive conditions. They have a handle on 14:30:05 5 where they think the marketplace is headed, what 14:30:08 6 do we have to do to do the best possible job to 14:30:12 7 support our retailers. It's a -- it's 14:30:16 8 a decision -- it's not a -- it's not a simple 14:30:17 9 decision at all. It's a decision that requires a 14:30:21 10 great deal of -- of input from your own, you know, 14:30:24 11 people who live with us on a daily basis. 14:30:27 12 Q (By Mr. Collins) Uh-huh. What you 14:30:27 13 just said in your last answer would -- applied or 14:30:30 14 would have applied at any time during 1998 in the 14:30:34 15 process of setting the wholesale price, correct? 14:30:41 16 A Yes and no. I mean, the first half 14:30:43 17 of 1998, the wholesale price was -- was not too 14:30:47 18 critical, because the issue was -- keeping up with 14:30:50 19 demand. And when -- like I say, it's a supply and 14:30:55 20 demand formula. When the demand is that high, 14:30:55 21 then you get other issues, shipping on time, good 14:31:01 22 quality, et cetera. So I think we had another set 14:31:03 23 of issues in the first half of '98. 14:31:06 24 Q The other set of issues in the first</p>	<p>14:32:36 1 A I read that, yes, I have. 14:32:38 2 Q Do you have any opinion as to whether 14:32:41 3 Adams stock was volatile because of reports of 14:32:46 4 seeing Adams product for sale in Costco? 14:32:50 5 A At what time frame, please? 14:32:52 6 Q Anytime in '98. 14:32:53 7 A Anytime in '98? 14:32:55 8 Q Well, from the IPO on. 14:33:05 9 A I don't know if this is going to be 14:33:06 10 the answer. I mean, I -- I may be confused, 14:33:10 11 because I tend to look at things operationally, 14:33:19 12 but there was a significant shift in the 14:33:21 13 marketplace with -- coincident with the Callaway 14:33:24 14 press release, and if -- if -- if that provided 14:33:31 15 volatility, then that would be an example. 14:33:36 16 Q What -- when you say there was a 14:33:38 17 shift in the marketplace coincident with the 14:33:42 18 Callaway press release, what do you mean? 14:33:47 19 A That -- I forget the date, but in 14:33:49 20 late July Callaway made a press release that 14:33:53 21 their -- they weren't making their numbers. I 14:33:56 22 don't remember the exact wording. And that the 14:33:58 23 marketplace was soft and it was going to stay 14:34:02 24 soft. That certainly had ramifications throughout</p>
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<p>14:31:09 1 half of '98 was keeping up with demand? 14:31:13 2 A I think that was the primary one, and 14:31:15 3 the support -- excuse me -- infrastructure support 14:31:17 4 it needed it and so on. 14:31:19 5 Q But at all times during '98, this 14:31:23 6 process of setting the wholesale price included 14:31:29 7 considerations of what was happening at the retail 14:31:32 8 end, correct? 14:31:33 9 A That's an input. 14:31:34 10 Q Also in this analyst report, also on 14:31:36 11 Page 242, there's a paragraph that begins: The 14:31:46 12 Reasonable Proposition. Projections for a new 14:31:47 13 product are inherently speculative. 14:31:55 14 If you could read that 14:31:56 15 paragraph to yourself 14:32:05 16 A Okay. I've read it. 14:32:06 17 Q In the second half of the paragraph, 14:32:08 18 it reads: Callaway shares were often volatile in 14:32:12 19 response to concerns such as, quote, I saw a Big 14:32:16 20 Bertha in Costco; or, quote, some retailer offered 14:32:20 21 a Big Bertha at \$10 below an earlier price that 14:32:25 22 proved to be irrelevant. We expect Adams stock to 14:32:25 23 also be volatile 14:32:32 24 Do you see that?</p>	<p>14:34:07 1 the industry. 14:34:09 2 MR. BESSETTE: Todd, we've 14:34:10 3 been going about another hour, so whenever 14:34:13 4 you're at a break. 14:34:14 5 MR. COLLINS: I hate to be so 14:34:16 6 accommodating, but let's break. 14:34:17 7 MR. BESSETTE: All right. 14:34:18 8 MR. MAHONEY: We're off the 14:34:19 9 record at 2:34 p.m. 14:34:19 10 (A recess was taken from 14:34:20 11 2:34 to 2:51.) 14:34:20 12 MR. MAHONEY: All right. We 14:34:21 13 are back on the record. It is 2:51 p.m. beginning 14:34:26 14 at Tape 5. 14:34:28 15 Q (By Mr. Collins) Do you have any 14:34:29 16 reason to think that Adams Golf stock price was 14:34:32 17 affected by people seeing Adams Golf clubs for 14:34:36 18 sale at Costco? 14:34:39 19 A I would have no idea. 14:34:41 20 Q Now, there's an article in "Golf Pro" 14:34:58 21 magazine? 14:34:58 22 A In what magazine? 14:34:59 23 Q "Golf Pro," Exhibit 233. 14:35:03 24 A Okay.</p>

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<p>14:57:13 1 area and ask questions.</p> <p>14:57:17 2 Q Okay. That's good.</p> <p>14:57:21 3 Exhibit 99 Now, does this</p> <p>14:57:37 4 appear to be the transcript of the August 6th</p> <p>14:57:42 5 conference call?</p> <p>14:57:46 6 A That's what it appears to be, yes.</p> <p>14:57:48 7 Q Do you recall participating in the</p> <p>14:57:51 8 conference call?</p> <p>14:57:52 9 A I'd say generally. Not specifically,</p> <p>14:57:55 10 but generally.</p> <p>14:57:56 11 Q Now, this was the first conference</p> <p>14:57:57 12 call you had after you went public, correct?</p> <p>14:58:05 13 A I'll take your word for that.</p> <p>14:58:07 14 Q Okay.</p> <p>14:58:10 15 A I don't remember.</p> <p>14:58:23 16 Q All right. There is -- now, the --</p> <p>14:58:29 17 do you recall that the stock price declined</p> <p>14:58:33 18 generally after the IPO during July and August?</p> <p>14:58:38 19 Do you recall that?</p> <p>14:58:43 20 A Yes, I believe it did.</p> <p>14:58:47 21 Q Did the company take any steps in</p> <p>14:58:49 22 response to the decline in the stock price?</p> <p>14:58:56 23 A My recollection is that the company's</p> <p>14:58:59 24 position was the best thing we could do would be</p>	<p>15:00:41 1 A Kind of the same answer as before.</p> <p>15:00:45 2 My recollection doesn't have any. If there's</p> <p>15:00:49 3 documents that could help me, I'd be happy to look</p> <p>15:00:51 4 at them, but I don't remember any.</p> <p>15:00:53 5 Q That's fine. Okay. Sorry.</p> <p>15:02:17 6 Exhibit 175, please. This is</p> <p>15:02:35 7 a document that you authored on or about</p> <p>15:02:37 8 September 25th, 1998?</p> <p>15:02:40 9 A I believe so. Again, it's unsigned,</p> <p>15:02:43 10 but I'll take responsibility</p> <p>15:02:45 11 Q And you did so in your role as CEO,</p> <p>15:02:50 12 board chairman?</p> <p>15:02:52 13 A Yes, sir.</p> <p>15:02:55 14 Q You'll see on the first page it says</p> <p>15:02:57 15 under A-1: Mark Gonsalves left the company.</p> <p>15:03:01 16 A That's correct.</p> <p>15:03:02 17 Q Why did that occur?</p> <p>15:03:06 18 A Best of my recollection is he</p> <p>15:03:09 19 felt that he -- he resigned and he felt that he</p> <p>15:03:10 20 had gotten a lot of exposure and could capitalize</p> <p>15:03:14 21 on that and, you know, take advantage of the</p> <p>15:03:20 22 situation</p> <p>15:03:20 23 Q Was he asked to leave?</p> <p>15:03:22 24 A No, sir.</p>
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<p>14:59:01 1 to operate as well as we could.</p> <p>14:59:03 2 Q Was there a -- was there</p> <p>14:59:07 3 consideration given to a stock buyback by the</p> <p>14:59:13 4 company?</p> <p>14:59:13 5 A My recollection is that that was</p> <p>14:59:15 6 something that was suggested by somebody. It</p> <p>14:59:22 7 might have been a fund manager or something, but I</p> <p>14:59:25 8 think the subject did come up, yes.</p> <p>14:59:27 9 Q All right. In fact, there's some</p> <p>14:59:27 10 discussion of it on Page 4351.</p> <p>14:59:30 11 A Okay.</p> <p>14:59:31 12 Q In response to a question by Brian</p> <p>14:59:35 13 Wall.</p> <p>14:59:39 14 A Okay. Let me get to this page,</p> <p>14:59:41 15 please.</p> <p>14:59:42 16 Q This is his second entry on that</p> <p>14:59:45 17 page, and then you will see your response.</p> <p>15:00:10 18 A All right.</p> <p>15:00:11 19 Q Did -- in or about August '98, were</p> <p>15:00:19 20 there discussions with Lehman about doing a</p> <p>15:00:23 21 buyback?</p> <p>15:00:23 22 A I don't remember any</p> <p>15:00:34 23 Q Did the board consider a buyback as</p> <p>15:00:37 24 early as August?</p>	<p>15:03:22 1 Q You recall we looked earlier at</p> <p>15:03:24 2 Exhibit 57, the August 14th, 1998 memo?</p> <p>15:03:28 3 A 57.</p> <p>15:03:32 4 Q It was you expressed concerns about a</p> <p>15:03:34 5 variety of matters, including the inside sales</p> <p>15:03:37 6 group.</p> <p>15:03:38 7 A It's in the pile here. I'll have to</p> <p>15:03:39 8 find it.</p> <p>15:03:39 9 MR. BESSETT: Get it so you</p> <p>15:03:39 10 will have it.</p> <p>15:03:50 11 THE WITNESS: Right. You went</p> <p>15:03:51 12 through all of them. That's 97. I thought that</p> <p>15:03:57 13 was a 5. Thank you.</p> <p>15:04:06 14 A Okay. I have it.</p> <p>15:04:08 15 Q (By Mr. Collins) Was his departure</p> <p>15:04:10 16 unrelated to the concerns expressed in this</p> <p>15:04:13 17 Exhibit 57? In other words, you said some pretty</p> <p>15:04:21 18 harsh things in the August 14th memo at</p> <p>15:04:21 19 Exhibit 57.</p> <p>15:04:27 20 Was his departure unrelated to</p> <p>15:04:29 21 this memo or your discussions with him about it?</p> <p>15:04:33 22 A In a subsequent meeting, when Mark,</p> <p>15:04:40 23 you know, nicely explained to me, nicer than I</p> <p>15:04:45 24 was, nicely explained to me that I'd gone over the</p>

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<p>15:04:48 1 top here and these things were easily explained --</p> <p>15:04:52 2 MR. BESSETTE: The things in</p> <p>15:04:53 3 this --</p> <p>15:04:54 4 A I'm sorry. I beg your pardon. I'm</p> <p>15:04:57 5 looking at -- these things being A through I, I</p> <p>15:04:59 6 think, all of my points.</p> <p>15:05:03 7 No, we -- you know, he -- to</p> <p>15:05:07 8 Mark's credit, he was used to dealing with my</p> <p>15:05:10 9 volatility, and it wasn't acrimonious. It was</p> <p>15:05:12 10 more about getting on with business.</p> <p>15:05:20 11 Q (By Mr. Collins) Did you ask him not</p> <p>15:05:24 12 to leave?</p> <p>15:05:28 13 A I don't remember that. I remember</p> <p>15:05:33 14 that he -- as I said, he said that he felt that he</p> <p>15:05:39 15 was at a unique time in his life, and you know,</p> <p>15:05:44 16 who am I to deny that -- that opportunity.</p> <p>15:06:40 17 THE WITNESS: Good idea. This</p> <p>15:06:41 18 might -- excuse me, this might be superfluous</p> <p>15:06:44 19 because I'm just sitting here with my water. What</p> <p>15:06:48 20 I remember most about this was that when Mark and</p> <p>15:06:57 21 I met I was a little embarrassed because it was</p> <p>15:06:58 22 obvious that I'd gone way over the top. I think I</p> <p>15:07:01 23 said up front I'm not too proud of this memo and</p> <p>15:07:04 24 my style at the time.</p>	<p>15:08:34 1 of which I can now find, so just take a look at</p> <p>15:08:36 2 that, if you would.</p> <p>15:08:37 3 You were the author of that</p> <p>15:08:42 4 document?</p> <p>15:08:42 5 A Same answer, not signed, but yes.</p> <p>15:08:45 6 Q You -- you -- and you -- you wrote it</p> <p>15:08:49 7 on or about the date indicated --</p> <p>15:08:52 8 A Yeah, it's --</p> <p>15:08:53 9 Q -- in your duties as CEO?</p> <p>15:08:56 10 A Excuse me.</p> <p>15:08:58 11 Q Is that right?</p> <p>15:08:59 12 A Yes.</p> <p>15:09:01 13 Q What happened within the last two</p> <p>15:09:04 14 weeks, as stated there, to change the situation,</p> <p>15:09:10 15 vis-a-vis the impact of Costco?</p> <p>15:09:23 16 A I think in the first place, for me to</p> <p>15:09:25 17 give you a better answer, give me the reference to</p> <p>15:09:28 18 the two weeks, and I think I can do a better job</p> <p>15:09:30 19 for you.</p> <p>15:09:33 20 Q May I?</p> <p>15:09:35 21 A Sure.</p> <p>15:09:36 22 Q Sorry to take it back.</p> <p>15:09:37 23 In the beginning it says: One</p> <p>15:09:39 24 thing that is hurting us badly is Costco. It was</p>
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<p>15:07:07 1 You know, we were very busy,</p> <p>15:07:10 2 very tough times, and Mike -- Mark and I had a</p> <p>15:07:13 3 nice evening conversation. And I don't remember</p> <p>15:07:15 4 the specific details, but that, you know, he</p> <p>15:07:24 5 pointed out that this was just a product of gossip</p> <p>15:07:28 6 and bickering and so on and so forth, as I'd said.</p> <p>15:07:33 7 Q Now, did Mr. Bessette just suggest</p> <p>15:07:35 8 that you add that comment?</p> <p>15:07:42 9 A No. I'm --</p> <p>15:07:43 10 MR. BESSETTE: Telepathic.</p> <p>15:07:44 11 MS. REED: You have amazing</p> <p>15:07:46 12 skills</p> <p>15:07:46 13 A No. I was -- I was -- the truth of</p> <p>15:07:47 14 the matter is I thought about it before. I had</p> <p>15:07:50 15 forgotten about it, to tell you the truth, and it</p> <p>15:07:53 16 just -- you know, we're going over a lot of stuff</p> <p>15:07:55 17 here and it just kind of came to me.</p> <p>15:08:11 18 Q (By Mr. Collins) Exhibit 80 --</p> <p>15:08:14 19 A 80.</p> <p>15:08:17 20 Q -- if I may.</p> <p>15:08:19 21 A Is that a new one or --</p> <p>15:08:22 22 Q I'm about to hand it to you.</p> <p>15:08:25 23 A Okay. I guess it's a new one, then.</p> <p>15:08:31 24 Q And I have many copies of this, none</p>	<p>15:09:41 1 a problem before, but has greatly escalated in the</p> <p>15:09:44 2 last two weeks and will be very difficult in Q4 --</p> <p>15:09:48 3 A Okay.</p> <p>15:09:49 4 Q -- around Christmas.</p> <p>15:09:51 5 A That's what you're referring to?</p> <p>15:09:52 6 Q Yes.</p> <p>15:09:53 7 A I'm forecasting to the fourth</p> <p>15:09:54 8 quarter, and I'm saying it's -- it's my analysis</p> <p>15:09:57 9 or the analysis, based on information that's been</p> <p>15:09:59 10 given to me, that there's -- I didn't go into this</p> <p>15:10:04 11 detail, but there's two factors at work here.</p> <p>15:10:09 12 One is the significant</p> <p>15:10:11 13 fall-off in the market. I mean, that's the big</p> <p>15:10:14 14 one, of course, from the Callaway statement, and</p> <p>15:10:17 15 so on and so forth. And then the fourth quarter</p> <p>15:10:21 16 is historically a weak quarter anyway. It's one</p> <p>15:10:24 17 of the weakest -- I think it's the -- I think it's</p> <p>15:10:26 18 the weakest quarter of -- of the fiscal year.</p> <p>15:10:29 19 So anything that goes on is</p> <p>15:10:32 20 now much more sensitive than it was before. And</p> <p>15:10:39 21 I'm -- I am, in this memo, forecasting to the</p> <p>15:10:41 22 board what I see happening in Q4.</p> <p>15:10:43 23 Q Respectfully though, the question I</p> <p>15:10:45 24 asked was: What happened in the last two weeks</p>

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<p>15:10:47 1 that you refer to in the first paragraph?</p> <p>15:10:51 2 A And I think my answer is that in the</p> <p>15:10:52 3 last two weeks, I had sat down and I'd -- I want</p> <p>15:10:56 4 to use correct English. In the last two weeks, I</p> <p>15:10:59 5 had undergone the process of sitting down and</p> <p>15:11:02 6 taking a look at what was coming up over the next</p> <p>15:11:06 7 quarter, and this memo was the result.</p> <p>15:11:08 8 Q Well, then, during the two weeks</p> <p>15:11:10 9 before October 8, did something happen to make you</p> <p>15:11:15 10 think that Costco represented more of a concern</p> <p>15:11:19 11 than you had previously thought?</p> <p>15:11:25 12 A I would say it was the awareness of</p> <p>15:11:27 13 how -- the -- the increasing severity of the</p> <p>15:11:30 14 market drop. And again, as I said, anything that</p> <p>15:11:34 15 I had encountered before had all of a sudden taken</p> <p>15:11:37 16 on new significance, as, you know -- as</p> <p>15:11:40 17 a percentage of a bad situation, so to speak.</p> <p>15:11:43 18 Q But now, you didn't say that in that</p> <p>15:11:45 19 memo. Was that just because your -- you were</p> <p>15:11:50 20 inattentive in the memo, or is it instead because you</p> <p>15:11:53 21 were being coy?</p> <p>15:11:54 22 A Oh, I'm not very coy. I'm sorry.</p> <p>15:11:59 23 Nobody's ever accused me of being coy. I --</p> <p>15:12:01 24 I'm -- I just -- this is what I believed to be</p>	<p>15:13:12 1 A Yes, I did.</p> <p>15:13:13 2 Q Was this another time, writing this</p> <p>15:13:15 3 memo, of your being -- I've forgotten what words</p> <p>15:13:21 4 you used.</p> <p>15:13:22 5 A Volatile?</p> <p>15:13:23 6 Q Well, your words, not mine, sir.</p> <p>15:13:25 7 A Okay.</p> <p>15:13:25 8 Q Was this memo something you wrote</p> <p>15:13:27 9 when you were volatile, or was this something that</p> <p>15:13:33 10 you wrote when you were being clear-eyed and</p> <p>15:13:40 11 analytical?</p> <p>15:13:40 12 MR. BESSETTE: Or somewhere in</p> <p>15:13:41 13 between.</p> <p>15:13:42 14 THE WITNESS: Yeah, hopefully</p> <p>15:13:43 15 somewhere in between.</p> <p>15:13:45 16 A Well, it is what it is. I'm just</p> <p>15:13:49 17 trying to lay out the facts as I see them. No</p> <p>15:13:55 18 embellishment, you know, no finger-pointing. You</p> <p>15:13:58 19 know, life is what it is, and our job is to get on</p> <p>15:14:01 20 with it and do the best job we can. However you</p> <p>15:14:04 21 describe that, I mean, it's not up to me.</p> <p>15:14:07 22 Q (By Mr. Collins) Now, you say in</p> <p>15:14:08 23 that first paragraph that Costco was a problem</p> <p>15:14:10 24 before. Do you see that?</p>
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<p>15:12:04 1 true</p> <p>15:12:06 2 Q Let me take a look at that again, if</p> <p>15:12:07 3 I may.</p> <p>15:12:08 4 A Sure.</p> <p>15:12:09 5 Q Now, it says here: We estimate a</p> <p>15:12:14 6 negative sales effect in Q4 of 20 to 25 percent,</p> <p>15:12:19 7 based on a market survey (customers who refuse to</p> <p>15:12:25 8 buy).</p> <p>15:12:27 9 A Yes.</p> <p>15:12:27 10 Q In that -- what was the basis of --</p> <p>15:12:30 11 tell me what the market survey was.</p> <p>15:12:34 12 A I can only guess it was something</p> <p>15:12:35 13 that Chip provided me.</p> <p>15:12:37 14 Q And the 20 to 25 percent that you</p> <p>15:12:43 15 estimated was based on customers who refused to</p> <p>15:12:45 16 buy for what reason?</p> <p>15:12:46 17 A I have no idea.</p> <p>15:12:53 18 Q When you sent this memo, was there</p> <p>15:12:56 19 anybody who wrote back a response?</p> <p>15:13:01 20 A Same answer as before. If you have a</p> <p>15:13:03 21 document, I don't remember anything.</p> <p>15:13:05 22 Q When you wrote this memo, you</p> <p>15:13:08 23 believed what you set forth in the memo at the</p> <p>15:13:10 24 time you wrote it, correct?</p>	<p>15:14:12 1 A Yes.</p> <p>15:14:12 2 Q But it's gotten worse in the last two</p> <p>15:14:15 3 weeks.</p> <p>15:14:16 4 A Yes.</p> <p>15:14:16 5 Q Describe to me the change that</p> <p>15:14:19 6 occurred.</p> <p>15:14:19 7 A The change that occurs is relative to</p> <p>15:14:22 8 the upcoming fourth quarter where, as I said</p> <p>15:14:25 9 before, you have a combination of a basically slow</p> <p>15:14:28 10 time of year anyway. A lot of major manufacturers</p> <p>15:14:33 11 like to clean out their inventories that time of</p> <p>15:14:35 12 year, so there's eight million deals in the</p> <p>15:14:38 13 marketplace, and so it's a -- you know, it's a</p> <p>15:14:40 14 tough market and it's a down market, so everything</p> <p>15:14:43 15 that happens as a percentage of the total is going</p> <p>15:14:46 16 to be exacerbated.</p> <p>15:14:48 17 Q Now, Mr. Adams, when you wrote this</p> <p>15:14:52 18 memo, you were writing this memo to inform the</p> <p>15:14:56 19 members of the board of something you hadn't</p> <p>15:14:58 20 informed them of before?</p> <p>15:14:59 21 A I don't have any recollections of,</p> <p>15:15:03 22 you know, this kind of information, me presenting</p> <p>15:15:07 23 this kind of infor- -- me presenting this kind of</p> <p>15:15:10 24 information to the board before.</p>

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15:15:11 1 Q Well, the board knew that the fourth
 15:15:14 2 quarter was coming up before you wrote this memo,
 15:15:17 3 correct?
 15:15:17 4 A Yeah.
 15:15:17 5 Q The board knew because you had
 15:15:20 6 disclosed it in public reports, as well as other
 15:15:23 7 places I'm sure, that the fourth quarter is a weak
 15:15:27 8 quarter on a seasonal basis for the company,
 15:15:29 9 correct? This wasn't the first time you had
 15:15:31 10 informed the board that the fourth quarter is a
 15:15:35 11 seasonally weak time of the year, correct?
 15:15:37 12 A I don't know if I informed them, but
 15:15:39 13 let's say they knew.
 15:15:40 14 Q Okay. So my question is the same:
 15:15:42 15 What's the new thing that happened that prompted
 15:15:43 16 you to write this memo?
 15:15:44 17 MR. BESSETTE: Okay. This is
 15:15:45 18 the third time, I think, but --
 15:15:46 19 THE WITNESS: It's okay.
 15:15:48 20 MR. BESSETTE: Let's do --
 15:15:49 21 THE WITNESS: Maybe I'll get
 15:15:50 22 it clearer if I keep going.
 15:15:51 23 A You had a different marketplace. You
 15:15:53 24 had a completely different marketplace. Once the

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15:15:56 1 Callaway memo came out and -- or I'm sorry -- the
 15:16:05 2 Callaway commentary with the quarterly report,
 15:16:07 3 that had a serious negative effect on the
 15:16:11 4 marketplace.
 15:16:11 5 And it's -- you know, again,
 15:16:13 6 just being honest, it's not stated in here. I
 15:16:16 7 don't -- I don't talk about it -- enough about our
 15:16:18 8 competition, Orlimar. Maybe I was embarrassed
 15:16:21 9 But they were -- they were beating -- they were
 15:16:25 10 beating us up in some areas.
 15:16:26 11 Q (By Mr. Collins) Well, now, you --
 15:16:28 12 you -- you entitled the memo --
 15:16:38 13 A Here, I'll save your --
 15:16:38 14 Q Thank you.
 15:16:40 15 A -- save your -- I have a copy now.
 15:16:43 16 Q I don't have a microphone yet,
 15:16:43 17 though.
 15:16:54 18 MR. COLLINS: Thank you.
 15:16:55 19 Q (By Mr. Collins) You entitled the
 15:16:57 20 memo Fourth Quarter The first paragraph refers
 15:16:59 21 to Costco, not to Orlimar, not to Callaway
 15:17:02 22 Am I reading that correctly?
 15:17:09 23 A Yes.
 15:17:09 24 Q And then A deals with Costco.

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15:17:11 1 B deals with Costco.
 15:17:12 2 Am I reading that correctly?
 15:17:15 3 A Yes.
 15:17:15 4 Q And then C deals with an engraving
 15:17:19 5 machine that is necessary to deal with Costco, not
 15:17:24 6 with market downturn or Orlimar.
 15:17:26 7 Is that accurate?
 15:17:28 8 MR. BESSETTE: That's a
 15:17:30 9 misstate, his prior testimony.
 15:17:32 10 Q (By Mr. Collins) Well, what was the
 15:17:33 11 purpose of the engraving machine?
 15:17:35 12 A To be able to track product into the
 15:17:37 13 field.
 15:17:38 14 Q And that was necessary because of
 15:17:39 15 competition with Orlimar?
 15:17:44 16 A Could have been. Could have been a
 15:17:46 17 million reasons. I mean, I -- if you would like
 15:17:48 18 me to give you some, I certainly can, but it's --
 15:17:51 19 it's -- there are a lot of reasons for being able
 15:17:54 20 to track your product into the field.
 15:17:55 21 Q Sure. Well, now, Paragraph 4 also
 15:17:58 22 deals with Costco and not with Orlimar or general
 15:18:01 23 market conditions, right?
 15:18:02 24 A That's correct.

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15:18:03 1 Q And then the next paragraph after
 15:18:05 2 that, talking about how Costco makes its money,
 15:18:12 3 also deals with Costco and not Orlimar or general
 15:18:15 4 market conditions or seasonal problems in the
 15:18:17 5 fourth quarter, right?
 15:18:18 6 A That's -- right, yes.
 15:18:19 7 Q And so are you really arguing that
 15:18:21 8 Paragraph C about committing \$125,000 to an
 15:18:26 9 engraving machine is something that you were
 15:18:29 10 discussing in this context because of that million
 15:18:33 11 reasons, or you were discussing it in this context
 15:18:35 12 because of the serious problem posed by Costco?
 15:18:38 13 A I was discussing it in that context
 15:18:42 14 as a way of tracking product into the field, that
 15:18:49 15 if applicable to Costco, certainly we could use.
 15:18:55 16 Now, this says we have
 15:18:59 17 committed \$125,000 to an engraving machine. I
 15:19:03 18 suspect that thing wasn't up and running until
 15:19:06 19 about the following, I don't know, March or April.
 15:19:10 20 It --
 15:19:10 21 Q But of course --
 15:19:12 22 A -- certainly wasn't imminent
 15:19:12 23 Q Forgive me.
 15:19:15 24 But, of course, the reason you

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<p>15:39:30 1 going to be marked?</p> <p>15:39:33 2 A I have no idea.</p> <p>15:39:34 3 Q And when did the marking begin?</p> <p>15:39:39 4 A I'm sorry. Same answer. I don't</p> <p>15:39:40 5 have any idea.</p> <p>15:39:41 6 Q Okay. And in this case, with regard</p> <p>15:39:42 7 to those retail accounts, the purpose of the</p> <p>15:39:49 8 marking was specifically to cut down on</p> <p>15:39:52 9 transshipment, I gather, correct?</p> <p>15:39:54 10 A It looks like for those particular</p> <p>15:39:57 11 accounts that's what the objective was, yes.</p> <p>15:40:11 12 Q Exhibit 245, please.</p> <p>15:40:21 13 You remember this press</p> <p>15:40:29 14 release?</p> <p>15:40:29 15 A Again, generally, but not</p> <p>15:40:33 16 specifically</p> <p>15:40:34 17 Q You approved its issuance?</p> <p>15:40:37 18 A I would have.</p> <p>15:40:59 19 Q In this press release, in the fourth</p> <p>15:41:09 20 paragraph, with reference to the outlook for the</p> <p>15:41:12 21 fourth quarter, you were quoted as saying, and I'm</p> <p>15:41:15 22 just reading part of this: In addition, we</p> <p>15:41:17 23 anticipate our sales will be further impacted by</p> <p>15:41:19 24 the recent gray market distribution of our</p>	<p>15:42:27 1 Q (By Mr. Collins) Please</p> <p>15:42:31 2 A No. It -- I mean, if I'm reading</p> <p>15:42:33 3 this, it says "our -- our fourth quarter sales,"</p> <p>15:42:39 4 and I think I'm -- I interpret this as I'm saying:</p> <p>15:42:41 5 Look, I'm talking about what's coming up in the</p> <p>15:42:44 6 fourth quarter. The marketplace looks lousy and</p> <p>15:42:47 7 all problems are exacerbated.</p> <p>15:42:50 8 I'm sorry I'm putting this</p> <p>15:42:53 9 into slang, but that's how -- that's how I</p> <p>15:42:59 10 interpret it.</p> <p>15:42:59 11 Q Now, Orlimar eventually was</p> <p>15:43:03 12 gray-marketed, correct?</p> <p>15:43:03 13 A I -- I believe that's true.</p> <p>15:43:11 14 Q Do you have any view on -- on the</p> <p>15:43:15 15 basis of your experience with the market,</p> <p>15:43:20 16 experience with gray marketing, why Orlimar was</p> <p>15:43:24 17 targeted for Costco?</p> <p>15:43:28 18 MR. BESSETTE: Can I --</p> <p>15:43:30 19 MR. COLLINS: I'll make that a</p> <p>15:43:31 20 better question.</p> <p>15:43:32 21 Q (By Mr. Collins) If you have any</p> <p>15:43:33 22 opinion on this, why do you think that Orlimar, as</p> <p>15:43:35 23 well as Adams Golf, suffered from gray marketing</p> <p>15:43:42 24 at Costco?</p>
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<p>15:41:22 1 products to a membership warehouse club.</p> <p>15:41:24 2 Do you see that?</p> <p>15:41:25 3 A Yes, I do.</p> <p>15:41:26 4 Q It was an accurate statement as of</p> <p>15:41:28 5 October 22nd?</p> <p>15:41:29 6 A I believe it was.</p> <p>15:41:31 7 Q And the membership warehouse club, I</p> <p>15:41:33 8 presume, was -- was Costco?</p> <p>15:41:35 9 A I think that's a fair assumption.</p> <p>15:41:37 10 Q And what did you mean by "further"?</p> <p>15:41:43 11 A I'm reading this. I'm sorry.</p> <p>15:41:45 12 Q Please.</p> <p>15:41:51 13 A That as the -- again, as the -- with</p> <p>15:41:54 14 the tightening of the market, as I said, I think</p> <p>15:41:57 15 the -- I was reading the sentence below it: The</p> <p>15:42:01 16 continuing weakness in the golf equipment market.</p> <p>15:42:03 17 Just as I said before, any problem was going to</p> <p>15:42:07 18 become exacerbated because the market is getting</p> <p>15:42:17 19 worse.</p> <p>15:42:17 20 Q Okay. Weren't you saying that prior</p> <p>15:42:18 21 to the fourth quarter sales had been impacted by</p> <p>15:42:24 22 gray market distribution?</p> <p>15:42:26 23 MR. BESSETTE: Misstates</p> <p>15:42:27 24 testimony.</p>	<p>15:43:43 1 A Hot product.</p> <p>15:43:46 2 Q Did the margins and other forms of</p> <p>15:43:51 3 consideration paid to Orlimar retailers have</p> <p>15:43:53 4 anything to do with the gray marketing?</p> <p>15:43:57 5 MR. BESSETTE: Wait. I don't</p> <p>15:43:57 6 understand that.</p> <p>15:43:59 7 Q (By Mr. Collins) Was the -- Orlimar</p> <p>15:44:01 8 paid a healthy margin to retailers compared to</p> <p>15:44:04 9 other golf manufacturers, correct?</p> <p>15:44:05 10 A That's --</p> <p>15:44:06 11 MR. BESSETTE: Objection.</p> <p>15:44:07 12 Again, I don't think a wholesaler pays margins.</p> <p>15:44:11 13 A Yeah. That's worth --</p> <p>15:44:13 14 MR. COLLINS: That's quite</p> <p>15:44:13 15 right. Thank you. But I think we all know what</p> <p>15:44:16 16 we're talking about.</p> <p>15:44:17 17 Q (By Mr. Collins) Orlimar retailers,</p> <p>15:44:19 18 in general, received, compared to the industry, a</p> <p>15:44:23 19 large margin on retail sales in 1998, true?</p> <p>15:44:27 20 A I believe that's true, yes.</p> <p>15:44:31 21 Q Okay. Did that have anything to do,</p> <p>15:44:33 22 in your opinion, with why Orlimar was hit with</p> <p>15:44:37 23 gray marketing in Costco?</p> <p>15:44:39 24 A I don't think so. I would think that</p>

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<p>15:44:41 1 the Costco decision would be based on the 15:44:43 2 popularity of the product. That would be my 15:44:56 3 opinion. 15:45:04 4 Q Exhibit 17, please. 15:45:14 5 Have you seen this document 15:45:15 6 before? 15:45:15 7 A Yes, I have. 15:45:16 8 Q And that is your signature? 15:45:19 9 A Yes, it is. 15:45:20 10 Q And you had approved and sent out 15:45:21 11 this letter on or about January 4th, '99 to 15:45:25 12 retailers? 15:45:25 13 A Yes, I did. 15:45:31 14 Q In the middle of the page you say: 15:45:34 15 We can't help but be a little dissatisfied. Why? 15:45:39 16 And then: One, we failed to defend our market 15:45:41 17 position strongly enough. We didn't respond to 15:45:45 18 misleading advertising from both legitimate 15:45:50 19 competitors and knockoffs. 15:45:50 20 What did you mean by that, 15:45:59 21 please? 15:46:00 22 A The Orlimar ads were rigged to make 15:46:05 23 their product look superior. I guess I didn't 15:46:14 24 think we made enough of an issue out of that.</p>	<p>15:47:20 1 for authorized retailers at Adams. 15:47:20 2 A The statement -- unfortunately, I do 15:47:23 3 remember this one because this was a bit of an 15:47:26 4 early argument between Chip and myself. He didn't 15:47:28 5 think that statement even belonged in there. He 15:47:30 6 thought we had reacted very, very quickly. 15:47:32 7 So I was just taking the 15:47:36 8 position kind of like before: Look, if -- if any 15:47:41 9 retailer thinks we reacted slowly, let's admit it 15:47:45 10 and go on forward. 15:47:46 11 Q Okay. But now I wasn't asking in 15:47:48 12 that question -- 15:47:49 13 A I'm sorry. 15:47:49 14 Q -- about the speed of reaction. 15:47:50 15 A Oh, I'm sorry. 15:47:52 16 Q I was just asking you to agree with 15:47:54 17 what you wrote here, which is that Costco in 1998 15:47:57 18 hurt retail margins for Adams authorized 15:47:57 19 retailers 15:48:02 20 You aren't denying that now, 15:48:04 21 are you? 15:48:04 22 A We were slow to react when 15:48:06 23 unauthorized resellers, such as Costco, hurt 15:48:08 24 retail margins.</p>
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<p>15:46:18 1 Q By "legitimate competitors," were you 15:46:22 2 referring to Orlimar? 15:46:24 3 A Yes. 15:46:24 4 Q And who were you referring to by 15:46:28 5 "knockoffs"? 15:46:28 6 A I think there were 40 of them at one 15:46:30 7 time. Take your pick. 15:46:31 8 Q They were engaged in misleading 15:46:36 9 advertising, the knockoffs? 15:46:36 10 A Well, we had a guy that ran an ad in 15:46:39 11 "USA Today," called his club the TL240 and didn't 15:46:46 12 even use his own picture. He actually used a 15:46:48 13 picture of our club. 15:46:50 14 Q Now, Point 2: We were slow to react 15:46:53 15 when unauthorized resellers, such as Costco, hurt 15:46:56 16 retail margins. 15:46:58 17 Do you see that? 15:46:59 18 A Yes, I do. 15:47:00 19 Q So it was accurate that in 1998 15:47:05 20 Costco hurt retail margins for authorized 15:47:14 21 retailers at Adams? 15:47:14 22 THE REPORTER: I'm sorry 15:47:14 23 Could you repeat that? Costco hurt retailers -- 15:47:14 24 Q (By Mr. Collins) Hurt retail margins</p>	<p>15:48:09 1 As I said before, it could 15:48:11 2 be -- it could easily be true. It could easily be 15:48:13 3 true in, say, one marketplace, maybe two 15:48:16 4 marketplaces. I remember the argument that -- not 15:48:18 5 the -- the discussion that I had with Chip was 15:48:20 6 that there was no evidence that this happened 15:48:22 7 across the board or was even significant. All I 15:48:27 8 was trying to do, as I said before, was, you know, 15:48:32 9 listen, if you think it's our problem, we'll admit 15:48:35 10 it and let's go forward. 15:48:36 11 Q You said in your last answer "one 15:48:39 12 marketplace, maybe two marketplaces," but this 15:48:41 13 letter, I gather, was sent to all Adams Golf 15:48:45 14 retailers in the U.S.? 15:48:47 15 A I believe it was, yes. 15:48:48 16 Q Why didn't you send it just to the 15:48:50 17 one or two marketplaces where you claim -- where 15:48:52 18 the only locations where retail margins were hurt 15:48:55 19 by Costco? 15:48:56 20 A Oh, I don't know. I don't -- I don't 15:48:57 21 see any sense in doing it that way to tell you the 15:49:00 22 truth. You're making a -- you're making a 15:49:03 23 statement that says: Hey, we're on your side. 15:49:07 24 We're trying to help you. If you're going to make</p>

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<p>16:08:35 1 A I don't know. I mean, it -- I'd have 16:08:39 2 to see numbers. 16:08:41 3 Q Unquestionably, there was a time when 16:08:44 4 Tight Lies was a hot product. Was the Tight Lies 16:08:49 5 still a hot product in 1999? 16:08:54 6 A I mean, by definition, as the product 16:08:56 7 gets older, it's -- it's not as desirable as it 16:09:00 8 was previously. I mean, it's all relative. 16:09:04 9 Q Did gray marketing continue with 16:09:06 10 regard to the Tight Lies, even as the product got 16:09:12 11 older? 16:09:12 12 A I can only answer based on what I 16:09:14 13 have in my hand, which says as of March it had 16:09:19 14 continued. 16:09:19 15 Q Why did you issue this press release, 16:09:22 16 the March '99 press release? 16:09:38 17 A I don't know specifically. 16:09:45 18 Q Did you believe that this press 16:09:49 19 release would improve your relations with Adams' 16:09:54 20 retailers? 16:09:55 21 A If I was -- if I was, you know, 16:09:58 22 making an assessment, that's how I would read it. 16:10:08 23 Q Do you have any recollection as to 16:10:15 24 whether gray marketing of the Tight Lies occurred</p>	<p>16:11:28 1 make a guess, that's -- that's how I would look at 16:11:46 2 it. 16:11:46 3 Q Have you ever heard of a company by 16:11:48 4 the name of TeleGolf? 16:11:52 5 A No. 16:11:52 6 Q It was a company hired by Adams to 16:11:54 7 handle direct response sales? 16:11:58 8 A Okay. I mean, I -- the name doesn't 16:12:00 9 ring a bell. 16:12:02 10 Q Now, direct response sales, what sort 16:12:07 11 of sales were those, please? 16:12:09 12 A Direct response refers to people who 16:12:12 13 saw the infomercial on television and called up to 16:12:15 14 buy a product. 16:12:17 15 Q Okay. Was the -- the persons who 16:12:22 16 called up, were they speaking during '98 to Adams 16:12:26 17 employees or to some -- someone to whom you had 16:12:30 18 contracted that job? 16:12:31 19 A It would be someone who -- with whom 16:12:33 20 we had contracted. 16:12:37 21 Q Okay. Was there a change in that 16:12:37 22 company during 1998? 16:12:39 23 A To TeleGolf? 16:12:42 24 Q From -- well, actually, what I'm</p>
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<p>16:10:19 1 after March '99? 16:10:23 2 A Again, I think you -- I thought I 16:10:25 3 answered that, but excuse me if I didn't. My -- 16:10:30 4 my recollection is that it happened -- and my 16:10:34 5 recollection fortified by this document is that it 16:10:36 6 happened in March of 1999 or thereabouts. 16:10:40 7 If you're going to ask me 16:10:42 8 anything after that, I would request some 16:10:44 9 documents to refresh my memory because I -- 16:10:47 10 it's -- it's -- outside of the fact that some 16:10:52 11 degree of it always is going to happen forever and 16:10:56 12 ever, I couldn't give you a good answer. 16:10:59 13 Q So it's your opinion that some amount 16:11:01 14 of gray marketing will occur regardless of how hot 16:11:04 15 the product is? 16:11:06 16 A Oh, I think if the product has no 16:11:09 17 value, I can't imagine anybody would want to gray 16:11:12 18 market it. 16:11:13 19 Q Okay. But it's your opinion that 16:11:15 20 with a hotter product, there's generally going to 16:11:17 21 be more gray marketing? 16:11:19 22 A I mean, you're going to -- you're 16:11:20 23 asking me to think like a gray marketer, so to 16:11:24 24 speak, but that would be -- you know, if I had to</p>	<p>16:12:43 1 asking you is -- I'll mark it. 16:12:48 2 MR. COLLINS: Exhibit? 16:12:50 3 THE REPORTER: 296. 16:12:52 4 MR. COLLINS: 296. Thank you 16:12:54 5 very much. I'll ask you to mark this. 16:13:03 6 And I only have this copy. I 16:13:06 7 apologize 16:13:07 8 MR. BESSETTE: It's going to 16:13:07 9 be hard to ask questions from it 16:13:11 10 MR. COLLINS: Just you watch 16:13:12 11 me. 16:13:12 12 (Deposition Exhibit 296 16:13:13 13 was marked.) 16:13:13 14 Q (By Mr. Collins) This is from the 16:13:14 15 KPMG workpapers with regard to the third quarter 16:13:19 16 review, and if you could read to yourself from 16:13:24 17 the -- the discussion at the bottom of the page 16:13:24 18 about TeleGolf and reserves. 16:13:34 19 A Okay. I read it. 16:13:35 20 Q Are you familiar with the increase in 16:13:38 21 reserves for direct response sales in the third 16:13:43 22 quarter? 16:13:44 23 A No, not specifically. 16:13:45 24 Q Okay. Were you aware of allegations</p>

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16:36:34 1 decision or not, I mean, I'm sure Chip's memory
16:36:38 2 for that is a lot better than mine's -- mine is.
16:36:40 3 Excuse me.

16:36:41 4 Q But is it fair to say that the
16:36:45 5 \$4.3 million credit resulted from an amalgam of
16:36:51 6 factors, including Orlimar competition, Costco
16:36:57 7 gray marketing, the decline of the -- or the
16:37:01 8 difficulty in the manufacturing industry as a
16:37:05 9 whole? Is that a fair statement?

16:37:07 10 MR. BESSETTE: Calls for
16:37:07 11 speculation. In --

16:37:10 12 Q (By Mr. Collins) Please.

16:37:10 13 A I would say certainly not an equal
16:37:12 14 measure. The decline in the marketplace and
16:37:18 15 Orlimar, definitely. To what degree, if any, at
16:37:21 16 that late juncture Costco had an effect on
16:37:24 17 anything, again, Chip could tell you better than I
16:37:26 18 could.

16:37:27 19 Q But you can't exclude any one of
16:37:29 20 those three factors as at least a partial cause, I
16:37:32 21 gather. You can't exclude the market conditions,
16:37:35 22 you can't exclude Costco, and you can't exclude
16:37:38 23 Orlimar, correct?

16:37:39 24 A I don't think I could exclude any of

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16:37:40 1 them, you know, sitting here trying to remember
16:37:44 2 back eight years with any degree of accuracy, heck
16:37:47 3 no.

16:37:48 4 Q That's fine. Thank you, sir, for
16:37:50 5 your time.

16:37:50 6 A And by the way, I did remember an
16:37:52 7 answer to one of your questions, if you care.

16:37:54 8 Q Of course, please.

16:37:55 9 A But -- I don't know if it's relevant
16:37:55 10 or not, but you asked me about the D&O insurance.

16:37:57 11 Q Please.

16:38:00 12 A There are actually two things. One
16:38:02 13 was that -- I don't think they're related either,
16:38:06 14 but who knows.

16:38:07 15 Clint Eastwood had agreed to
16:38:09 16 go on our board of directors, and I think we were
16:38:11 17 all pretty excited, if not star-struck about that.
16:38:15 18 And then his advisors told him not to do it
16:38:20 19 because, in their diligence, they didn't think we
16:38:22 20 had enough D&O insurance. So that was a big
16:38:25 21 disappointment. We looked forward to having Clint
16:38:27 22 come in every month to our meetings.

16:38:29 23 And then Darl, in his role as
16:38:32 24 chief financial guy with his experience in public

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16:38:35 1 companies and so on, if I remember correctly, did
16:38:38 2 an analysis, and his conclusion was that we needed
16:38:41 3 to upgrade our D&O insurance. But I don't know if
16:38:44 4 that was influenced by Clint Eastwood's decision
16:38:47 5 or not.

16:38:48 6 Q Okay. Just one follow-up on that.
16:38:50 7 I'll leave Clint Eastwood alone, but with regard
16:38:53 8 to Darl, he came to the company before the IPO,
16:38:58 9 correct? I believe it was --

16:39:00 10 A Yeah. I believe he did. I think it
16:39:03 11 was fairly close, but yes.

16:39:04 12 Q Okay. And even though he came before
16:39:09 13 the IPO, it wasn't until October that it was --
16:39:13 14 that any action was taken in -- in connection with
16:39:20 15 increasing the D&O coverage? Is that accurate?

16:39:20 16 A I mean, again, the records will show
16:39:23 17 the dates. I don't remember specifically.

16:39:26 18 MR. COLLINS: All right. No
16:39:29 19 further questions and thank you again.

16:39:29 20 MR. BESSETTE: I've got a
16:39:29 21 couple. And I don't think we'll need to switch.
16:39:30 22 I was thinking we would, but --

16:39:31 23 MR. COLLINS: Go ahead.

16:39:31 24 EXAMINATION

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16:39:33 1 BY MR. BESSETTE:

16:39:33 2 Q So, Mr. Adams, if you would take
16:39:36 3 Exhibit 57, which you have, I think, now in front
16:39:38 4 of you, and Mr. Collins asked you quite a few
16:39:41 5 questions about it, but I'm not sure the record is
16:39:44 6 clear, so to be clear: How did you resolve the
16:39:48 7 issues that you raised in this memorandum? How
16:39:51 8 did you resolve them with Mark?

16:39:54 9 A Well, I think I testified to this,
16:39:57 10 but, you know, Mark came back and we spoke. We
16:40:00 11 had -- I said -- I think I said we had a meeting
16:40:02 12 one evening, and he proceeded to verify pretty
16:40:09 13 much what I -- I knew when I wrote this, that all
16:40:13 14 these allegations were, you know, the result of
16:40:16 15 backbiting and bickering and low morale and so on
16:40:19 16 and so forth, and that they, you know -- I had
16:40:25 17 overstated my case. And, you know, I kind of
16:40:31 18 understood that.

16:40:33 19 But I guess, you know, it's
16:40:35 20 also fair to say that when I asked Mark, I said:
16:40:39 21 Okay. I'll buy all that. I kind of knew all
16:40:41 22 that. What I really wanted to get out of you was:
16:40:45 23 Where are we going from here? What are we going
16:40:47 24 to do?

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16:40:50 1 My recollection is that I
 16:40:51 2 don't think my -- I don't think his -- his answer
 16:40:56 3 to that or his analysis of that was as dynamic as
 16:40:59 4 I hoped it would be.
 16:41:01 5 Q What do you mean?
 16:41:05 6 A That we got this program in place.
 16:41:07 7 We're going to implement this. You know, I'm
 16:41:10 8 making these changes; you know, we have really got
 16:41:12 9 this thing under control; you know, we're going to
 16:41:16 10 go forward; and -- and, you know, you're going to
 16:41:19 11 be just really impressed with all the things we're
 16:41:22 12 doing and so on and so forth.
 16:41:23 13 I -- I think there was another
 16:41:24 14 thing to it. I guess I had a little bit of a
 16:41:27 15 leaning towards wanting to have people in the
 16:41:28 16 field, salespeople in the field, and I don't think
 16:41:34 17 that -- I don't think he was too excited about
 16:41:39 18 that.
 16:41:39 19 Q Was there any -- did you find any
 16:41:41 20 evidence of intentional double shipping?
 16:41:44 21 A No. I mean, we -- Mark and I talked
 16:41:46 22 about that, that those were the -- like I say,
 16:41:51 23 those were the office cooler gossip-type stuff,
 16:41:54 24 and there was no records, no evidence, no proof,

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16:41:56 1 no nothing. It was just that I was so
 16:41:59 2 disappointed that it even came up.
 16:42:01 3 Q Same question with respect to
 16:42:02 4 consignment sales.
 16:42:03 5 A Yeah, the whole -- I mean, I think --
 16:42:05 6 again, maybe I was just too brief with it. I
 16:42:08 7 said: 8 high, all those -- all those allegations.
 16:42:10 8 I said: I knew they were -- they just weren't the
 16:42:14 9 kind of conversations I wanted to hear from people
 16:42:16 10 in a sharp, progressive department.
 16:42:18 11 Q Why did you write in the memo, you
 16:42:21 12 know: I know this is going on, they say this is
 16:42:24 13 going on? What were you trying to communicate?
 16:42:25 14 A I was trying to communicate that --
 16:42:31 15 that -- that I had -- my expectation for that
 16:42:33 16 group was very high, and I wanted to be very,
 16:42:35 17 very, very clear that that was not the reaction I
 16:42:42 18 got when I went down and talked to them myself.
 16:42:45 19 And I just wasn't going to leave any room, you
 16:42:48 20 know -- searching for words here.
 16:42:53 21 It was -- I wanted to let them
 16:42:56 22 know, darn it all, that this isn't the way you ran
 16:42:59 23 a sales department, and I depend on -- on you
 16:43:01 24 guys. You're supposed to be one of my absolute

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16:43:04 1 strongest factors in the company.
 16:43:06 2 And when I hear this kind of
 16:43:08 3 backbiting and arguing and so on and so forth, you
 16:43:11 4 know, don't tell me that so and so really meant
 16:43:14 5 something else when they said it or whatever the
 16:43:15 6 deal is. That's -- that's, you know -- I don't
 16:43:23 7 know what the word is -- childish almost. How
 16:43:26 8 about a department that's -- that's on top of --
 16:43:30 9 of its game, so to speak, and it's got plans going
 16:43:33 10 forward. That's what I wanted to hear.
 16:43:36 11 Q All right. Let me ask you to look at
 16:43:38 12 Exhibit 80. I think in your stack it's the one
 16:43:40 13 with the yellow sticker on top.
 16:43:45 14 A Yes.
 16:43:45 15 Q Okay. That should be the October
 16:43:50 16 8th, 1998 memo to the board members regarding the
 16:43:55 17 fourth quarter.
 16:43:56 18 A Right.
 16:43:56 19 Q And you talked with Mr. Collins quite
 16:44:00 20 a bit about that, but again, I'm not sure the
 16:44:02 21 record is real clear.
 16:44:03 22 Why did the Costco issue take
 16:44:05 23 on added significance in October 1998, more so
 16:44:09 24 than it had pre-IPO or even up till October 1998?

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16:44:22 1 MR. COLLINS: Asked and
 16:44:22 2 answered.
 16:44:22 3 A Now do I answer?
 16:44:22 4 MS. REED: Yeah.
 16:44:22 5 Q (By Mr. Bessette) Yeah.
 16:44:22 6 A Because the market had changed. I
 16:44:24 7 mean, Callaway had come out with a statement that
 16:44:29 8 said, they're -- if I remember correctly, they
 16:44:32 9 didn't meet their numbers or their expectations,
 16:44:34 10 that the market was -- was soft, the Asian market
 16:44:38 11 was bad shape. And that Asian market is a
 16:44:42 12 big percentage of the world market. And I'm
 16:44:45 13 paraphrasing here, but that's pretty much what
 16:44:47 14 Callaway said.
 16:44:47 15 And when that comment was
 16:44:49 16 made, Callaway was the -- the voice of the public
 16:44:53 17 market for golf equipment. I mean, they were the
 16:44:55 18 only public company that Wall Street even -- in
 16:44:57 19 fact, they might have been the only public company
 16:45:00 20 period, but they certainly were the only public
 16:45:02 21 company that Wall Street looked at.
 16:45:03 22 So when Callaway said that,
 16:45:05 23 that was a major, major, major thing, and it got
 16:45:08 24 reported in all the golf magazines and so on and

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16:45:11 1 so forth.
 16:45:12 2 So what happens is retailers
 16:45:14 3 start -- they react to that. They say: Oh, my
 16:45:17 4 gosh. Things are going to get bad. Maybe we
 16:45:20 5 better cut back on our inventories. We better cut
 16:45:23 6 back on our buying. Well, now the snowball is
 16:45:26 7 starting.
 16:45:27 8 They cut back on their buying.
 16:45:28 9 The big guys, the Callaways, Taylor Mades, they'd
 16:45:32 10 all go back and say: Wait a minute, wait a
 16:45:33 11 minute, you know, we'll make you a deal. We'll
 16:45:35 12 give you six-month terms. We'll do this, we'll do
 16:45:37 13 that, whatever the -- whatever we can do to
 16:45:40 14 protect their position.
 16:45:40 15 Meanwhile, we're in there as
 16:45:45 16 the company with the least amount of brand equity
 16:45:48 17 compared to those big guys, you know, trying to
 16:45:51 18 protect our position, and it just gets harder and
 16:45:54 19 harder and harder.
 16:45:55 20 So if -- just to throw a
 16:45:56 21 number at it, if -- if, you know, we use the
 16:46:00 22 Poughkeepsie story, if it's 300 clubs at Costco,
 16:46:06 23 it's 300 out of half a million; and then in the
 16:46:11 24 fourth quarter, it's 300 out of -- I don't know

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16:46:14 1 what we shipped in the fourth quarter, but it
 16:46:18 2 wasn't very many. So it was a percentage. It
 16:46:19 3 just becomes a much more serious issue, and a much
 16:46:21 4 more visible issue.
 16:46:22 5 Q Is that the reason you wrote the
 16:46:24 6 memo?
 16:46:24 7 A Yeah. You couldn't hide from it. I
 16:46:26 8 had to show the board that I was aware of the
 16:46:28 9 situation and that, you know, we were going to do
 16:46:29 10 something about it.
 16:46:34 11 Q Okay. In the last subject area, you
 16:46:38 12 talked a little bit about the due diligence
 16:46:40 13 process in connection with the initial public
 16:46:43 14 offering. And I think you made it clear that you
 16:46:46 15 and other management members of Adams Golf were
 16:46:49 16 aware, pre-IPO, of certain -- certain number of
 16:46:55 17 clubs purporting to be Adams Golf clubs in certain
 16:46:59 18 Costco stores.
 16:46:59 19 Do I understand that right?
 16:47:02 20 MR. COLLINS: Vague and
 16:47:02 21 ambiguous.
 16:47:04 22 THE WITNESS: Boy. Thanks.
 16:47:07 23 A Pre-IPO, when we discussed this with
 16:47:12 24 all of the people, that was the situation in

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16:47:18 1 Canada, no matter how small it was, it was still
 16:47:21 2 the situation in Canada, and the fact that there
 16:47:25 3 were always going to be some golf clubs in the
 16:47:32 4 gray market because that's the way life was. I
 16:47:34 5 thought I was clear about that, but I may not --
 16:47:40 6 it was just fully discussed.
 16:47:42 7 Q (By Mr. Bessette) That's what I want
 16:47:42 8 to explore. You say it was fully discussed. Who
 16:47:45 9 discussed it and among -- among who was it
 16:47:48 10 discussed, I should say?
 16:47:49 11 A I mean, I can't speak for other
 16:47:51 12 people. I can only speak for myself, you know,
 16:47:53 13 when I had conversations, but I mean, with Lehman
 16:47:57 14 Brothers, with any of the analysts or
 16:48:00 15 representatives of the bankers that we talked to,
 16:48:04 16 the lawyers, the financial people. There were
 16:48:09 17 just a myriad of -- of discussions with a myriad
 16:48:12 18 of -- of, I guess, experts in their particular
 16:48:15 19 fields, and that along with many other things was
 16:48:18 20 discussed.
 16:48:18 21 Q And did any of those people, whether
 16:48:21 22 they be underwriters, lawyers, financial people,
 16:48:24 23 or anyone else involved in the due diligence
 16:48:26 24 process, ever express the view to you that there

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16:48:30 1 should be a separate stand-alone risk factor in
 16:48:34 2 the prospectus concerning the gray market or
 16:48:36 3 Costco?
 16:48:36 4 A No, they did not.
 16:48:39 5 Q Did you think that there should be a
 16:48:40 6 separate risk-factor disclosure in the prospectus
 16:48:44 7 about gray marketing or Costco?
 16:48:45 8 A No, I did not.
 16:48:46 9 Q Why?
 16:48:46 10 A It wasn't significant. I mean, you
 16:48:49 11 brought it up because -- I guess I'm anticipating
 16:48:53 12 a question here, but -- because I brought up
 16:48:55 13 everything I could think of, but it just wasn't
 16:48:58 14 significant.
 16:48:58 15 MR. BESSETTE: That's all I
 16:48:59 16 have. Thank you very much.
 16:49:00 17 MR. COLLINS: Well, let me
 16:49:01 18 follow up just a little bit.
 16:49:01 19 FURTHER EXAMINATION
 16:49:05 20 BY MR. COLLINS:
 16:49:06 21 Q Exhibit 80, the October 8th, '98
 16:49:08 22 memo. If I'm really hearing you correctly,
 16:49:12 23 Mr. Adams, you're saying that the real issue as of
 16:49:14 24 October 8th, '98, the real issue was A, industry

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16:49:18 1 conditions, and B, Orlimar; is that right?
 16:49:21 2 A Yes.
 16:49:22 3 Q Then why in the world did you only
 16:49:23 4 talk about Costco in that memo?
 16:49:27 5 MR. BESSETTE: Asked and
 16:49:27 6 answered, but let's do it again for the record.
 16:49:29 7 A Because this was a Costco memo.
 16:49:33 8 Q (By Mr. Collins) Oh, okay. So tell
 16:49:35 9 me where I can find the industry conditions memo
 16:49:37 10 and the Orlimar memo.
 16:49:39 11 I'm sorry. I apologize for
 16:49:41 12 the facetiousness of that.
 16:49:44 13 A Okay. It's late.
 16:49:45 14 Q I sincerely apologize.
 16:49:47 15 But Mr. Adams, if this is a
 16:49:50 16 Costco memo, did you on or about October 8, 1998,
 16:49:56 17 write a memo on industry conditions, or did you
 16:50:00 18 write a memo on Orlimar?
 16:50:04 19 A I don't remember a specific memo on
 16:50:06 20 industry conditions or Orlimar. I certainly
 16:50:09 21 remember discussing those subjects with the board.
 16:50:11 22 Q Okay. Now we -- we looked earlier at
 16:50:13 23 the board minutes for the October board meeting,
 16:50:18 24 and you recall that the first subject matter was

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16:51:00 1 answer for me, but --
 16:51:02 2 Q No.
 16:51:02 3 A We didn't have a -- you know, it
 16:51:04 4 wasn't any particular agenda, let's hit the most
 16:51:07 5 important thing first and so on and so forth.
 16:51:09 6 And also, I'd say by October,
 16:51:13 7 the -- the industry conditions weren't much of a
 16:51:16 8 secret. They had been written about in all the
 16:51:18 9 golf magazines and on and on and on, so -- we
 16:51:21 10 certainly didn't ignore them, but -- you know,
 16:51:26 11 Orlimar was certainly no secret. They had been
 16:51:28 12 written about in all the golf magazines. Costco
 16:51:32 13 was a -- was an Adams situation, internal Adams
 16:51:35 14 situation. Maybe that's why it came first. I
 16:51:37 15 don't know. I mean, it doesn't mean it's the most
 16:51:38 16 important. It means the other two were certainly
 16:51:41 17 industry situations -- situations.
 16:51:43 18 Q So as of October 1998, Costco was
 16:51:49 19 affecting Adams differently from how it was
 16:51:51 20 affecting the rest of the industry?
 16:51:55 21 A I would have no idea how it was
 16:51:56 22 affecting the rest of the industry.
 16:51:58 23 Q And as I understand it, what was a
 16:52:14 24 problem before October 8, 1998, with respect to

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16:50:22 1 Costco? Do you recall that?
 16:50:24 2 A Yes, I do. It was first in line,
 16:50:29 3 yes.
 16:50:29 4 Q And that's despite the fact that you
 16:50:31 5 claim now the industry conditions and Orlimar were
 16:50:38 6 more important at the time.
 16:50:39 7 Why didn't you discuss Orlimar
 16:50:41 8 or industry conditions first?
 16:50:42 9 MR. BESSETTE: Objection,
 16:50:43 10 assumes facts not in evidence, but the mere fact
 16:50:44 11 that it's listed first means it's the most
 16:50:47 12 important. I --
 16:50:47 13 Q (By Mr. Collins) Go ahead.
 16:50:47 14 MR. BESSETTE: -- don't think
 16:50:47 15 that's his testimony.
 16:50:48 16 MR. COLLINS: It might be your
 16:50:49 17 testimony, Paul, but I don't know that it's his
 16:50:50 18 testimony.
 16:50:51 19 MR. BESSETTE: No. I said
 16:50:52 20 it's not his testimony.
 16:50:53 21 Q (By Mr. Collins) You can go ahead.
 16:50:55 22 Mr. Adams.
 16:50:56 23 A Well, what I was going to say was,
 16:50:59 24 and now it's going to sound like he framed my

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16:52:19 1 Costco became a more serious problem after --
 16:52:25 2 start again.
 16:52:26 3 In the October 8, 1998 memo,
 16:52:31 4 Exhibit 80 --
 16:52:32 5 A Right.
 16:52:32 6 Q -- you talk about Costco from the
 16:52:35 7 standpoint, if I understand your testimony today,
 16:52:38 8 as something that was a problem before, but is a
 16:52:42 9 greater problem now because of industry conditions
 16:52:42 10 and Orlimar.
 16:52:47 11 Do I have that right?
 16:52:48 12 A I think that's a -- that's a fair
 16:52:50 13 assessment. I mean, it's -- it's -- this is
 16:52:53 14 talking about the fact that -- I mean, number one,
 16:52:55 15 this is the beginning of the fourth quarter, and
 16:52:58 16 it's talking about what's coming in the next three
 16:53:00 17 months.
 16:53:00 18 Q Okay.
 16:53:00 19 A And what it's saying is that as
 16:53:04 20 a percentage of the whole, the Costco situation
 16:53:07 21 is -- is obviously going to be worse. You know,
 16:53:09 22 it's by definition.
 16:53:11 23 Q So Costco represents a greater risk
 16:53:14 24 in a situation in which you've got declining

65 (Pages 254 to 257)

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BEEBE

CHRISTOPHER BEEBE

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1 A In 1998 I don't think that was the case,
2 because the Tight Lies, T-i-g-h-t, L-i-e-s -- that was
3 our product, that was the hot seller at the time --
4 Tight Lies was a very hot product. And people,
5 retailers, want what's hot and will sell what's hot if
6 they are making a lot of money or making little money

7 Taylor Made, Callaway, other big people
8 usually would give a retailer very little margin, but
9 because it was selling, they want what's hot to bring
10 people into their stores. Whether they bait and switch
11 or whether they sell the product, they want what's hot
12 in their stores

13 Q Did that change during the course of 1998 with
14 regard to Adams Golf?

15 A Did what change? I'm sorry.

16 Q Adams Golf -- I'm sorry -- the Tight Lie being
17 a hot product that retailers want.

18 A No. It was -- it was the hot product. Other
19 products came along, that were also well received, that
20 became hot during the year.

21 Q Okay. Now, during 1998 there was gray
22 marketing going on in Canada; is that correct?

23 A Yes, it is

24 Q How did you become aware of that?

25 A I believe it was by that fine welcome note

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1 from Greg Pratt that said, "Welcome" -- "Welcome, and we
2 have a problem."

3 Q Well, you know, I take lots of depositions,
4 and it almost never occurs that a deponent says, "There
5 is a particular document, and that document is the
6 document immediately in front of me." But maybe I'm
7 wrong

8 Take a look at a document previously marked
9 Exhibit 6, and take your time. But after you look at
10 it, tell me if that's the welcome note, the "fine
11 welcome note" you just referred to

12 A Yes, this is the note.

13 Q Now, in this -- at the time, WDC Mackenzie was
14 the Canadian distributor for Adams Golf, correct?

15 A That is correct.

16 Q And at the time, the way things were supposed
17 to work was that there was no product sold at retail
18 that hadn't been obtained by the retailer from WDC
19 Mackenzie, correct?

20 A That's how we envisioned it working, that's
21 correct.

22 Q And before you received this "fine welcome
23 note" at Exhibit 6, as I understand it, you had no
24 information that there were any retail sales going on in
25 Canada that hadn't been obtained from WDC Mackenzie?

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1 A I believe, reading this message -- this note,
2 it seems that I knew -- that they had told me
3 previously, because I had stopped a shipment to King Par
4 just after arriving. In the second-to-the-last
5 paragraph, it says I stopped something up.

6 So if that's the case, I would assume that I
7 was aware, because they had told me. But this is the
8 first time I saw something in writing where they
9 explained the situation in detail.

10 Q Okay. Thank you. Now, let's talk about that
11 King Par order for a moment.

12 A Okay.

13 Q You were good enough to point out that it's
14 referenced here. Do you remember that order?

15 A I believe I do.

16 Q What do you remember about it, please?

17 A I believe it was -- do you mean the order or
18 the circumstances surrounding the order?

19 MR. BESSETTE: I think he wants all of it, whatever
20 you remember about it.

21 MR. COLLINS: Please.

22 MR. BESSETTE: Okay. Sorry.

23 MR. COLLINS: No, no.

24 THE WITNESS: Getting into the company, Adams Golf,
25 everything was new. It was a little bit crazy. The

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1 company was growing. Shipments were going out in great
2 numbers. WDC Mackenzie said, I believe, that they heard
3 there was a shipment -- shipments going into their
4 market from gray marketers, and they believed that King
5 Par was one of these people.

6 I had never heard of King Par before. So I
7 went into our order base to find out about who this King
8 Par was, what they ordered in the past, what their order
9 history was, and what they had on order. And the order
10 history was not huge with us. Decent numbers, but
11 nothing spectacular.

12 And then you have a number of 1500 clubs.
13 It's out of the ordinary. And in my experience with
14 parallel exporters, this was one indication that someone
15 could be a parallel exporter -- or a gray marketer,
16 excuse me.

17 BY MR. COLLINS:

18 Q What do you mean by "parallel exporter"?

19 A Parallel exporter is the same as a gray
20 marketer. You have your parallel -- you export things
21 to your distributor, and on parallel lines someone else
22 is sending product into the country.

23 Q I see.

24 A Usually it goes directly to a retailer who has
25 friends in one country, brings the product over.

6 (Pages 18 to 21)

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CHRISTOPHER BEEBE

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1 Q Now, what was your experience, before Adams
2 Golf, with parallel exporters?
3 A In the golf industry, as well as a good number
4 of industries, unfortunately, there is a lot of gray
5 ship -- gray market or parallel products that go on.
6 Depending on the company and their sales practices and
7 their dedication to minimizing it, some companies have a
8 lot of parallel exports, some do not.
9 I worked at Lynx Golf previously, and Lynx
10 Golf was stronger outside the United States than inside
11 the United States. So people -- some retailers, some
12 salesmen in the United States, had a practice of
13 shipping product to other countries to increase their
14 commissions and their sales.
15 MR. COLLINS: (To the Reporter) Would you mind
16 reading that back.
17 (Answer read)
18 BY MR. COLLINS:
19 Q Now, with regard to gray-market or parallel
20 shipments, did I hear you correctly that the amount
21 of -- of that depends on the company and their sales
22 practices and their dedication to minimizing the
23 parallel or gray-market shipments?
24 A Yes.
25 Q Now, what did you mean when you referred to

Page 23

1 the company and their sales practices as -- as something
2 that affects the amount of gray-market shipments?
3 A Some companies turn a blind eye to parallel
4 shipments or let it happen knowingly by encouraging
5 shipments to someone that would ship overseas.
6 Q Now, in your last answer you referred to "some
7 companies."
8 A Yes.
9 Q Do I understand that other companies, in 1998,
10 reacted differently?
11 A That's correct.
12 Q What would other companies do when they --
13 what did other companies do in 1998?
14 A They had sales practices, such as Adams Golf,
15 where they found -- if they knew a product was going
16 overseas or a shipment was going somewhere that it was
17 not supposed to, they would stop that shipment.
18 When I worked at Ram Golf, the same thing
19 happened: You found a parallel, you would stop them;
20 stop the shipment.
21 Q Apart from stopping a shipment to a
22 parallel --
23 A Yes.
24 Q -- were there any other devices available to a
25 golf-club manufacturer in 1998 to minimize gray

Page 24

1 marketing?
2 A When we -- in some positions, when we expected
3 someone -- suspected someone was a parallel, we would
4 somehow mark product, such as take off the grip, put a
5 mark inside the head, put the grip back on.
6 And then, when the shipment was found to be at
7 a location that it wasn't supposed to be, we'd remove
8 the grip. If we found the mark, we could then find out
9 this person was, indeed, a parallel, and we would
10 close them down. If we found their packing list or
11 addresses on boxes that ended up overseas or in other
12 places, that was another way it would happen.
13 Q Okay. Okay. So apart from stopping shipments
14 to known parallels, apart from marking products or
15 checking the shipping or packing information, were there
16 any other steps available in 1998 to minimize?
17 MR. BESSETTE: Just generally, to any manufacturer?
18 MR. COLLINS: I'm sorry. My question is limited to
19 golf-club manufacturers in 1998.
20 MR. BESSETTE: All right.
21 THE WITNESS: Golf-club manufacturers. I'm looking
22 back, recalling. At that time, most of the major
23 manufacturers did not do anything different than that --
24 those tasks.
25

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1 BY MR. COLLINS:
2 Q In 1998, at Adams, to the extent that you
3 know, were retailers and distributors, in the U S and
4 internationally, contractually prohibited from
5 trans-shipping?
6 MR. BESSETTE: (To the Reporter) Can I get that
7 back, please.
8 (Question read)
9 THE WITNESS: Distributors were not allowed to
10 trans-ship inside the United States. I am not one
11 hundred percent sure of the details, but I'm sure
12 that -- I'm fairly certain that there was language that
13 they could not ship. If they got a product, it was for
14 their store; they could not pass it on to other
15 locations.
16 BY MR. COLLINS:
17 Q Okay. And I know you weren't certain of that,
18 but when you referred in your last answer to "language,"
19 where was that language found, to your knowledge?
20 A Okay. I don't recall, but I believe that for
21 distributors, it was in the distributing contract. For
22 the -- I believe, for Adams Golf, on the back of our
23 invoices, we had a sales policy.
24 Q Okay. So if we're talking about weapons in a
25 golf-club manufacturer's arsenal, in 1998, to combat

7 (Pages 22 to 25)

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